

**The Participation of Looked After Children  
in Permanency Planning**

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## Declaration

I declare that this thesis is all my own composition, that it constitutes the results of my own research and that it has not been submitted for any other degree or professional qualification except as specified.

Jennifer I. Turpie

March 2005



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*This study is dedicated to Denise*

*A young girl whose tenacity, resilience and voice inspired this work*

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## Abstract

Children's rights have achieved considerable legal status in Scotland, propelled by both the United Nations Convention on the Rights of the Child and the Children (Scotland) Act 1995. Now in key areas of law, children have the right to be consulted and have their views considered when major decisions are being taken that affect their lives. At the same time, adults have the responsibility to protect children and to prioritise children's best interest in making such decisions.

Although legislation and policy are increasingly emphasising children's rights, it is less clear to what extent these rights are realised for children in practice. This is a particularly salient issue for looked after children, as their lives are governed by a number of adults in various settings. Furthermore, looked after children are generally subjected to more formal decision making processes than their peers. The present study looks at one such process: decisions on permanency planning, which involve children growing up in the foster care system, away from their birth families. It asks how and to what extent these children's views are given 'due regard' in such decision making processes.

The present study argues that, despite child care legislation and policy advancing children's participation rights, translating these procedural rights in permanency planning practice is limited. Drawing on a review of current legislation and policy, in-depth interviews with looked after children in permanent care, social workers and other professionals, and a review of a sample of looked after children's files from one Scottish local authority, the

present study explores the inherent complexities of incorporating children's participation rights into permanency planning practice. In doing so, it argues that a series of interacting factors, for example the uncertainties and inconsistencies associated with permanency planning processes and protecting children from potentially harmful and/or uncertain information and processes act as unintended barriers to looked after children's participation in, arguably the most significant decision affecting their childhoods.

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## Introduction

When in direct social work practice, I worked at a Children's Aid Society in Ontario, Canada.<sup>1</sup> The majority of this work focused on children living in either foster, group or residential care. In a Scottish context, these children would have been considered looked after and accommodated. During that time, I became particularly interested in the experiences of those children whose permanent (long-term) plan was to grow up outside their birth families, either in foster or residential care. Although, my practice was guided by a belief that the best place a child to grow up was with his or her birth family; I soon recognized that for some this was not possible, and that for many it was not in his or her best interests.

The decision to legally remove a child from his or her birth family for the duration of childhood is one of great significance. It has short and long-term implications for that child, his or her family and those charged with his or her care. In my social work experience, permanency planning<sup>2</sup> for looked after children occurred on many different levels including: discussions between birth parents and social workers; between social workers and their managers; at committees and various other planning forums and in the Courts. Effectively, a number of professionals in a range of different forums determined which permanency plan would best promote a child's immediate

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<sup>1</sup> This would be equivalent to a Local Authority in Scotland and it delivers statutory child protection services.

<sup>2</sup> Permanency Planning refers to a model, which promotes early and decisive decision making for looked after children about which long-term plan is going to promote a child's healthy development and ensure a child's physical and emotional well being in a secure and stable placement (options could include a return to their birth family, long-term foster care or adoption).

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and long-term well-being. Rarely, in my experience did children participate in such decision making processes. Yet, with the advent of children's rights and evolving conceptions of childhood, there are now increasingly influential legal, social and academic discourses that promote the active participation of children in decision-making - particularly when major decisions are being made about their lives.

Birth parents and guardians have moral and legal responsibilities to promote and protect the well-being of children. Where a parent or guardian fails to do this, or is unable to meet minimum standards set by domestic law, statutory authorities have a duty to intervene and make suitable alternative arrangements for children. During periods where a child is separated from his or her family (by way of a legal order), statutory services are required to work with the family towards a successful re-integration of the child home. However, where re-integration is not possible and/or is not found to be in the child's best interest a secure, long-term alternative plan is required – otherwise known as a permanency plan. Generally speaking, options for children requiring long-term (permanent) care outside their birth families include: long-term placement with family or friends, adoption or long-term foster care.

The decision to permanently remove a child from his or her birth family throughout childhood is complex and as the present study will show, looked after children have explicit rights to be consulted and have their views and wishes given due regard (subject to age and maturity) when such a major decision is being made. Professionals charged with facilitating the decision making processes leading to permanency plans for looked after children are

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faced with the fundamental challenge of balancing a child's right to protection with his or her right to participate in what is a multifaceted, emotional and complicated process.

The overall aim of the present study is to contribute to the growing body of knowledge on how the views and wishes of 'looked after' children are meaningfully sought and balanced alongside their best interests. It is particularly concerned with the experiences of looked after children who are growing up outside their birth families and whose long-term plan was not adoption, rather it was either long-term foster or residential care. To achieve this, an in-depth exploration of the relevant legislation, child care literature and decision making processes associated with permanency planning was undertaken. Alongside this, the direct experiences of social work practitioners, other professionals and looked after children themselves were captured and analysed.

The present study first considers how relevant sections of the UN Convention and other international human rights treaties are integrated into current child care law in Scotland. In doing this, it identifies relevant sections of current Scottish child care legislation, which establish the legal framework from which local authorities are guided in their work with looked after children, requiring permanency for away from their birth families. In doing this, it reflects upon changes that have occurred to children's social and legal rights, as they relate to protection and participation over the past several decades.

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The present study goes on to explore the specific policies and processes of one Scottish local authority, which guide permanency planning for looked after children, outside their birth families. In particular, it focuses on decision making processes leading to alternative, permanent plans that involve a Parental Responsibilities Order (hereafter PRO). In doing this, particular attention is given to how this one local authority seeks to involve the views and wishes of looked after children in these decision-making processes, leading to PRO's. It includes an exploration of how professionals working with looked after children decide how and when children should participate (either by being present at meetings or through other mediums), what influences and determines practice and what is the actual level of the children's participation. This is followed by an in-depth exploration of how a group of looked after children experienced these decision making processes which led to their permanency plans, and how they defined their participation in that major decision.



## Chapter Two

### Literature Review

#### Introduction

Over the past three decades, there has been a growth in academic work, policy change and practice development in child protection, children's rights and more recently, the active involvement of children in decisions that directly affect their lives (Hill & Tisdall 1997; Cleland & Sutherland 2001; Thomas 2002). This chapter will track these developments, with particular focus on how the positions on child protection and participation have evolved historically, theoretically, philosophically and legislatively. There will follow a review of literature which considers how the concepts of protection and participation interact in present-day law, policy and practice. It will reflect on two key arguments – the first which states that ensuring a child's right to protection, whilst facilitating their participation creates an untenable tension and secondly the converse position which contends that the two principles can, should and do co-exist harmoniously. Academic, theoretical and legislative evidence on how these two key concepts can co-exist are persuasive, however, as Lowe and Murch (2003) caution, this growing 'rhetoric of legislative aspiration' is difficult to achieve in actual practice.

The final section of this chapter will review studies that have considered the implementation of these two concepts (protection and participation) in practice with children. It will do this first more broadly and will then focus on social work practice with looked after children – which will include a brief summary of what is meant by permanency planning and its developmental

roots. In doing this it will set the context for the present study – which considers looked after children's participation in the processes leading to one key decision about their well-being – a permanent plan to live away from their birth families.

### **Children protection and the emergence of the 'best interest' principle**

The mistreatment of children by society, parents and carers has occurred throughout much of recorded history (Hill & Tisdall 1997). However, social and legal constructions of mistreatment have not remained static and have evolved over the centuries, depending on social, economic and political contexts. Thorpe (1994) defines three distinct phases in the development of child protection legislation in Great Britain, each based on a 'concern' about children, and these are:

- Child employment and orphaned and destitute children;
- Baby farming and foster care; and
- The care of children in their own families.

Correspondingly, the first wave of formal child protection legislation dealt with the exploitation of children by employers. At the same time, Victorian philanthropists were concerned about the orphaned and destitute children who were rapidly becoming part of the 'under-life' in Europe, being seduced into crime in order to sustain themselves. In 1889 the Prevention of Cruelty to Children Act was introduced, which empowered police to search premises for children thought to be in danger and to remove them to a place of safety (a power which continues today in Scotland under section 57 of the Children (Scotland) Act 1995 – Child Protection Order or by way of a warrant granted



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by a children's hearing or a sheriff 1995 Act ss. 45, 63, 66, 69 (for hearing) & s. 76 (for sheriffs)). At the same time a number of non-governmental organisations (NGOs) emerged, which offered basic care to those children without homes or families. Many of these still exist today. The 1891 Custody of Children Act gave legal authority to these NGO child welfare charities to offer asylum to abandoned children.

Thorpe (1994) describes how these aforementioned developments were not about 'child protection' as we know it today, in that they only enabled interventions with children who were working and/or living on the streets. It did not provide protection to those children who were living in their own homes with family members. Harding (1991) describes the child care policy during that period as *laissez-faire* or *patriarchy*. She contends that a particular construction of childhood informed that policy approach. Children seen as their parent's possessions and families left to sort out their own affairs and state (e.g. external) interventions into private family spheres was kept to a minimum.

Intra-familial<sup>3</sup> child abuse emerged as a social 'problem'<sup>4</sup> in the mid 1960s, when physicians in the United States identified the concept of 'battered babies'. This was one of the outcomes resulting from developments in radiology, which made it possible to identify injuries to children as deliberate

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<sup>3</sup> Abuse, which occurs within the context of a private family sphere.

<sup>4</sup> "A social problem is a condition which is defined by a considerable number of people as a deviation from some social norm they cherish" (Fuller & Myers 1941: 320; quoted in Parton 1985: 5-6).

that may have previously been considered accidental<sup>5</sup>. Society's response to this realisation that parents could and were in fact, harming their children led to a raft of legislative changes allowing Governments to intervene more readily into private family lives– in the name of protecting children from home at the hands of their parents. A new construction of children emerged that viewed childhood as a 'distinct and vulnerable stage of the life-cycle' and one which required adult protection and adult decision-making and significantly one that increased formal protection for children from their parents. At the time, children were seen as having limited capacity for self determination and significantly, more emphasis was now being placed on outside professionals as decision makers for children – not just parents (Shemmings 1999).

In the United Kingdom, significant changes to child care policy and practice took place following the death of Maria Colwell in 1973. Maria died as a result of multiple injuries from her step-father, while under the formal supervision of social services. The conclusions of the Inquiry into her death led to intense media coverage and political alarm, resulting in calls for immediate action and reform to child protection policies and practice (Parton 1985). Similar to UK, in other countries there was a growing awareness of the number of non-accidental deaths of children at the hands of their parents and/or carers and governments responded by making fundamental shifts in the legal frameworks which governed relationships within families. The power of states to intervene in private family lives was re-enforced and a

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<sup>5</sup> 'Battered baby syndrome' soon changed to 'non-accidental injury' – to acknowledge that such injuries could also occur to older children.

strong legal basis for removing children at risk from their parents and/or carers was firmly established in law and policy (Landsdown 1994b).

In the late eighties and nineties another shift in child care policy took place, which saw greater emphasis being placed on supporting families and maintaining children in their own homes (Beckett 2003). This shift was influenced the Cleveland Inquiry<sup>6</sup> (in England) and the Orkney Inquiry (in Scotland) (Parton 1996; and Beckett 2003). Both inquiries considered the conduct of social services following cases that saw several children removed from their homes as a result of large-scale sexual abuse investigations. The parallels between these two inquiries and the subsequent conclusions are well-documented (Lockyer & Stone 1998). In brief, in the Cleveland Inquiry social workers and physicians were heavily criticised for intervening too quickly and removing the children. The Orkney Inquiry strongly criticised Scotland's emergency protection system for children and the policies and procedures around child protection investigations (particularly in relation to suspected sexual abuse). Notably, however, both inquiries emphasised the need to listen to children and to take seriously what they have to say in relation to any investigation or decision making about their well-being (Butler-Sloss 1988; and Clyde 1992).

In England, new legislation was enacted following on from the Cleveland Inquiry - the Children Act 1989 (which still governs child care social work in England and Wales<sup>7</sup>). This Act was described as "*a fundamental shift from the*

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<sup>6</sup> Although this event and its subsequent Inquiry took place in England, it was influential to Scottish law, policy and practice.

<sup>7</sup> While the present study was in its writing stage the Children's Bill was moving through Westminster parliament, and is intended to update the Children Act 1989.

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*adversarial legal system. The new emphasis is away from courts imposing solutions or orders and towards parents, relative and local authorities working in partnership..."*

(Quoted in Beckett 2003 – The Times, 8 October 1991).

The Children (Scotland) Act 1995 [hereafter the 1995 Act] soon followed in Scotland, which similarly emphasised working in partnership with parents whilst providing support to lessen the need for formalised state interventions into family lives. The 1995 Act also introduced a fundamental concept, that would alter the context of child protection policy and practice – that of parental responsibility. Parental rights now existed in order to enable parents and others to fulfil parental responsibilities, in other words children were no longer just 'possessions' of their parents (Norrie 1998). Parental responsibilities are defined as: to safeguard and promote the children's health, development and welfare; to provide direction and guidance in a manner appropriate to the child's stage of development; where the child is not living with the parent, to maintain personal relations and direct contact with the child on a regular basis; and to act as the child's legal representative (The 1995 Act s. 1(1)).

The 1995 Act also signalled a policy shift towards emphasizing the targeting of services towards the 'child in need' versus the provision of universal services, thus reinforcing the notion of the 'vulnerable' child in need of protection. Finally, the 1995 Act also reinforced<sup>8</sup> the rights of children to

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<sup>8</sup> Under the previous legislation (the Social Work (Scotland) Act 1968), children were afforded a right to express a view.

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have their views and wishes heard in relation to decisions being taken which affected their lives and for these views and wishes to be given due weight in any formal proceedings – the particulars of which are relevant to this present study are detailed in Chapter Four (Legal Framework).

Child protection law, policy and practice is often likened to a 'pendulum' and over the course of the last century- and as noted above - it has moved back and forth from interventions that place emphasis on protecting children as 'individual' units versus protecting and supporting families as 'units' and interventions that emphasise children's rights and those which call greater attention to parents rights (Tisdall 1997). Beckett (2003) argues that swings and shifts like this will likely continue to occur, as reconciling these desired outcomes has always been a struggle in child care legislation, policy and practice. Moreover, in his view these outcomes are ultimately incompatible. This present study considers Tisdall's and Beckett's points (as outlined above), with particular emphasis on exploring the rights of children to participate in 'best interests' decisions about their long-term plans to live apart from their birth families.

There have been significant shifts in international and national (western) legal structures, which govern parent and child relationships whereby children were once of little concern, to one where children's best interests are regarded as the paramount concern in any intervention (Lowe & Murch 2002). Children remain vulnerable to the actions and inactions of adults and government (Newell 1991). Consequently, law, policy and practice have developed based on a notion, which presumes children have inherent biological and psychological vulnerabilities. In most western societies,



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children are seen as being dependent on, and less powerful than adults. Consequently, law and policy exist to protect them, thus justifying the need for a protective framework based on what is in a child's 'best interest' (Neale 1999 – unpublished paper cited in Lowe & Murch 2002). The 'best interest' principle is effectively laid out in both international and national legislation. The United Nations Convention on the Rights of the Child (hereinafter the UN Convention) states:

*"In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interest of the child shall be a primary consideration"*

(the UN Convention s. 3 (1))

The Children (Scotland) Act 1995 states:

*"The court shall regard the welfare of the child concerned as its paramount consideration and shall not make any such order unless it considers that it would be better for the child that the order be made than that none should be made at all"*  
(The 1995 Act s. 11 (7)a).

Landsdown (1995) argues although the best interests principle is inherently beneficial to children; it is also a powerful tool, which is used by adults to justify any of their actions and to overrule the wishes and feelings of children. Moreover, the child care system is set up in such a way that adults determine what is in a child's best interest, relying on models, which often portray children as being inherently vulnerable. 'Best interest' decisions are value judgements and are therefore, influenced by the values of those agencies involved with a child and one will always be dealing with differing opinions and views (Marshall 1995a).

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Although the position of children in British society has undergone many positive changes and shifts in thinking, predominantly they have been identified as objects of concern. Furthermore, the child is all too often excluded from determining what is in their best interest (Marshall 1995b).

The next section will consider how the human and children's rights movements both contributed to and challenged the notions of child protection and best interest presented above.

### **Human Rights and Children's Rights**

Human rights represent one of the most powerful social discourses in today's society (Hill & Tisdall 1997). Human rights emerged from concerns about the inequalities experienced by particular individuals and groups, social movements and reactions to the atrocities carried out in the two world wars of the twentieth century (Wallace 1997). The human rights movement raised public awareness and triggered the development of internationally recognised human rights instruments – such as the Universal Declaration of Human Rights and its related Covenants and more recently the European Charter for Human Rights. These are intended to apply to every person, in all members states of the United Nations<sup>9</sup> yet certain instruments have also been developed, which apply to distinct groups or individuals because of their 'particular vulnerabilities', which warrant additional protection

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<sup>9</sup> "The United Nations has, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth within, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status" (preamble to the Universal Declaration on Human Rights).

(Wallace 1997). Children and young people are an example of where 'particular vulnerabilities' are recognised.

In 1919, Eglantyne Jebb established Save the Children. Save the Children is an international non governmental agency that provides development services and aid to vulnerable children throughout the world. To many, what Save the Children started formally, signalled the beginning of a movement, which would radically change the position of children and young people and ultimately led to the development of the United Nations Convention on the Rights of the Child [hereafter referred to as the UN Convention] (Wallace 1997). Jebb had been deeply concerned at the impact of the First World War on children, when she said: *"it is our children who pay the highest price for our short-sighted economic policies, our political blunders, our wars"* (quoted in Hammarberg 1990. p.98). Save the Children quickly established its place on the international stage and drafted the first declaration on children's rights – the Declaration on the Rights of the Child. In 1924, this Declaration was formally endorsed by the League of Nations<sup>10</sup> in 1924 and was renamed the Geneva Declaration of the Rights of the Child. This Declaration did not grant legal rights to children or impose any obligations on States to fulfil those rights rather it formally recognised the protection rights of children against economic, social and psychological exploitation. Irrespective of its shortcomings, it has been widely credited with bringing children's rights into the growing debates and developments of international standards of human rights (Wallace 1997).

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<sup>10</sup> The pre-cursor to the United Nations.



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The Geneva Declaration was followed by the UN General Assembly Declaration on the Rights of the Child, which was adopted in 1959. This Declaration also recognises children's fundamental human rights whilst acknowledging *"the child by his physical and mental immaturity needs special safeguards and care, including appropriate legal protection"* (The UN Declaration on the Rights of the Child 1959: preamble). Unlike its predecessor, this declaration calls upon parents, voluntary organisations, local authorities and national Governments to recognise children's rights and strive for their observation in national legislation and subsequent implementation in practice.

In the debates and developments surrounding children's rights, different approaches and philosophical positions emerged. Early conceptions of children's rights were more focused on the material needs of children versus their civil, legal and political rights. For example, the UN's 1948 Declaration on the Rights of the Child proclaimed the rights of the child, to mean ensuring needs for material and spiritual development were met – for example the right to food, shelter, help in times of sickness, to shelter when orphaned or homeless and to be reclaimed when they are 'erred' (Cleland & Sutherland 2001). Since then, others have argued that a children's rights' approach should be constructed using a more liberal position. In other words, children should have equal rights to adults and that any distinction between childhood and adulthood is arbitrary (Archard 1993). This philosophy promoted the rights of adults equally to the rights of children (e.g. the right to work, to vote, and to have lawful sexual relationships) (Holt 1974). However, this position was criticised for not recognising the

undeniable developmental processes that children move through, which inevitably limit a child's potential ability to exercise complete equal rights to adults (Freeman 1983). Hill and Tisdall (1997) point out that whilst this position is not generally accepted today, it was credited with widening the conception of children's rights beyond just protectionism.

In 1989, the UN General Assembly adopted the UN Convention on the Rights of the Child. It effectively widened the discourse of children's rights to include concepts of participation and citizenship. Children's rationality, autonomy and competence were formally recognised and promoted alongside their 'rights of protection'. Children were now constructed as independent social actors with possible separate interests to those of their parents and/or carers. Harding (1991) argued that children cannot and should not rely on their parents to always act in their best interests and they must therefore, be given the right to speak out and act for themselves and for the first time, this specific right was acknowledged by international law.

The UN Convention is described as being the pre-eminent contemporary expression of children's rights as it provides an internationally agreed minimum set of standards, to which its signatories aspire (Landsdown 1994b and Hill & Tisdall 1997). The United Kingdom ratified the UN Convention in 1991. Governments who sign and subsequently ratify the UN Convention are obliged by international law to implement each of its 54 Articles into national law, policy and practice (Chapter Four [Legal Framework] which discusses the UN Convention in greater detail). Remarkably, the UN Convention has gained more international support and prominence than any other similar United Nations initiative (Thomas 2002).

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The UN Convention sets out four basic categories of children's rights: the right to survival, development, protection, and participation in key decisions that concern them. As outlined in the introduction, this present study is primarily concerned with the interface between protection and participation. These two principles are laid out in Articles three and twelve of the UN Convention respectively. Article three of the UN Convention defines the protection principle:

*3.1 - 'in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interest of the child shall be a primary consideration'.*

*3.2 - 'state parties shall undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible to him or her, and, to this end, shall take all appropriate legislative and administrative measures.'*

Article twelve sets out the child's rights to participation:

*12.1. State parties shall assure to the child who is capable of forming his or her views the rights to express those views freely in all matters affecting the child, the view of the child being given due weight in accordance with the age and maturity of the child.*

*12.2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceeding affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.*

The implications of Article twelve are that in all matters affecting children, including judicial and administrative proceedings, they must be given the opportunity to participate in the decision making processes. This does not mean that children must express their view (s); rather they must be afforded the opportunity to express a view. Moreover, when a child does express a

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view, it must be given due weight, according to his/her age and maturity - when decisions are being taken that affect their lives. At the same time, all children have a right of protection and ultimately in any decision; the best interest of the child must be 'a' primary consideration (according to the UN Convention) and must be 'the' paramount consideration (according to the 1995 Act).

A child's right to participate is therefore qualified by both an assessment of that child's ability to form a view and his or her right to protection (e.g. is the decision about a matter which may threaten what is considered to be in their best interest). Any assessment of a child's ability to form a view is normally, if not always, undertaken by adults. Bell (1993) argues that the treatment of children as autonomous individuals in the British legal system is more rhetorical than real and that the decision as to whether or not a child's views will be heard is deeply entrenched in the traditional hierarchical power structures of society. In this traditional structure adults are making all the decisions ranging from when a child is old enough to even participate and to what weight is attributed to their views. As such, key questions need to be asked such as: what model of childhood is influencing the thinking of the adults responsible for assessing a child's ability to form a view; to what extent is the nature of the decision to be made influencing the adult's decision to facilitate the child's involvement and to what extent and are there structural or systemic factors which influence this?

The growth of children's rights followed a similar developmental course to other rights' movements. It is often compared to the women's movement - women like children, were once described as being 'weak and vulnerable'

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and for many years this was used to justify and maintain women's inferior status to men in most societies. Landsdown (1995) argues that this 'presumed vulnerability' was used as an excuse for failing to tackle structural inequalities, such as the right to vote, own property, equal pay and not to be discriminated against; and it was not until these were challenged that real change occurred for women. Landsdown (1995) maintains that this argument could be equally applied to children, by saying that if we are ever to achieve equal rights for children then a comparable shift must also take place that would enable children to more fully participate in all matters affecting their lives. There are however, some key differences - chiefly the children's rights movement has generally developed - driven by adults on behalf of children rather than by children and young people themselves (Hill & Tisdall 1997). Likewise, the systems in which children's rights are facilitated are more often than not structured by and run by adults. As Landsdown (1995) argues, adults are empowered by law to act on children's behalf and to exercise judgement over most moral, legal and practical decisions that affect children's lives.

However, despite these relevant points above, it is indisputable that fundamental and progressive changes took place during the twentieth century, which have changed attitudes towards children and much of this was accelerated by the children's rights movement. There has been a philosophical shift from regarding children as 'objects of concern' to acknowledging their rights as human beings with agency, which has resulted in many positive changes for children (Hodgson in Shemmings 1999).



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Gilligan (1992) argues how substantive rights may bring about little benefit unless they are supported by 'numerous and detailed' procedural rights – which ensures that rights holders are treated fairly and efficiently. Cooper (1993) reminds us how relevant this particular point is for local authorities that are charged with considerable powers impacting on children, particularly in relation to child protection and making alternative long term plans for children. But as Sawyer (1999) points out, in exercising all rights, particularly participation and protection, there may be conflicts and tensions (i.e. if a child takes a position in opposition to their parents or the local authority). Consequently, it can be argued that there are inherent complexities in attempting to equally balance children's rights to protection and participation and careful attention is required as to how it is carried out in practice.

This present study set out to explore the aforementioned challenge relating to looked after children and their right to participate in decisions about their long-term care. Marshall (1997) argues that the right to participate must be balanced with a continuing emphasis on the right to be protected. Whilst saying this, she acknowledges that achieving the balance is not always easy. She carried out a small scale study which identified two key issues for consideration in relation to reconciling a possible balance and these were: ensuring the development and use of participation mechanisms appropriate to children and consideration of whether an invitation to participate might in itself be against the child's best interest (Marshall 1997).

Whilst children's rights have achieved considerable status, its path has not been without some reservation and controversy. Human rights in general,

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are considered by some to be abstract and this argument has been used particularly in relation to children's rights (Shemmings 1999). There is a strong reluctance to accept children as a group who have valid claims on the possession of rights. Unlike factors such as gender and disability – all human beings were once children. Consequently, the uniqueness of childhood is therefore questioned (Hodgson 1999). Landsdown (1991) summarised three commonly used arguments against children's rights and these include:

- By giving children 'adult' rights and corresponding increased responsibility, thus denying them the right to enjoy childhood which amounts to an intrusion on this sacred period of their lives;
- Children are irrational, irresponsible and incapable of making informed choices – on matters that affect them; and
- Children are essentially powerless, lack control over their lives and they lack the experience to have control over their lives.

Alderson (2004) argues young children in other parts of the world have displayed considerable insight and capacity into their worlds, for example, orphaned children in Africa with AIDS. Although one cannot directly compare the experiences of children in Africa with those in Scotland, it is useful to consider the insight, maturity and resilience shown by children who are faced with difficult and challenging life experiences. Alderson rightly questions *"No one would wish children to bear such responsibilities, but the question of whether they can, or should or want to, is separate"*? She argues *"that if we are to be serious about children's views, we need to recognise that very young children, babies even have valid opinions, if only we know how to listen to them"*

(Guardian 19.4.04). This present study considers the extent to which looked after children participate in the development of their long-term plans (permanency plans). It is a decision that adults struggle with, let alone how to meaningfully involve children in a complex and emotional process.

### **Participation rights of children**

The active participation of children and young people in policy development and civic life has gained undeniable momentum in recent years (Hill & Tisdall 1997; Cleland & Sutherland 2001). Now more than ever groups of children and young people are being routinely consulted on matters that impact their lives. For example, in Scotland children and young people are routinely asked to participate in the development of policy (e.g. Education Debate 2002 and consultation on the Sexual Health Strategy 2004). Kirby et al (2003) cite three key outcomes from enabling children's increased participation in both policy and practice development. These are: 1) practical benefits to services; 2) citizenship and social inclusion; and 3) personal development. The first outcome is not entirely relevant to this present study, as it is more about children's involvement in service planning and policy development. The second outcome on citizenship refers to a contemporary discourse, which is used to describe ways in which 'citizens', in this case, children and young people are empowered to develop political responsibility and interest. Benefits of active citizenship include: fulfilling children's rights, increasing empowerment and responsibility, improving relationships between children/young people and adults, and promoting social inclusion (Kirby et al 2003). Many studies have shown the benefits to children by encouraging their genuine and active participation in all matters that affect



their lives, and these include: increased confidence and self-esteem, developed communication skills, and more resilience (Children and Young Peoples Unit 2001; Kirby et al 2003).

Moreover, ensuring children and young people's participation is to uphold their rights as citizens and service users and fulfils the legal responsibilities laid out in UN Convention and the 1995 Act. Sinclair (2004) lists the benefits of ensuring children's participation, which include:

- Improved decision making – participation leads to more accurate, relevant decisions, which are better informed and more likely to be implemented;
- Promotion of children's participation – a recurring theme of successive inquiries into abuse has been the failure to listen to children, it is essential that we listen to children's own accounts of their life experiences;
- Enhancement of children's skills – developing skills for debate, communication, negotiation, prioritisation, and decision making; and
- Empowerment and enhanced self esteem – provide a sense of self-efficacy and raised self esteem amongst children and young people.

Despite considerable developments and achievements in facilitating the active participation of children and young people in public life, it becomes markedly more complex when this same participation is sought on more intimate decisions that directly impact their well-being and future (Butler & Williamson 1994; Ruegger 2001; and Thomas 2002). How do you effectively engage a child in potentially painful and emotional decisions? For example, if a child's parents are undergoing a divorce and one parent is moving to

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another city, how do you meaningfully facilitate that child's involvement in discussions around this? Equally, how do you sensitively engage looked after children, who may have experienced abuse whilst living with their birth family, in meetings and decision making processes considering where they should be living in the short or long term? Here there is certain potential for competing rights and interests between children and their parents and/or between children, their parents and a third party (such as a local authority). When children are caught up in the complexities of conflicts between adults, engaging their meaningful participation is both complex and challenging to achieve.

Newell and Hodgskin (1998) argue that the rights embodied in the UN Convention must provide a framework from which to analyse the extent to which proposals promote the best interest of children. In other words do interventions that seek to protect children, also respect the child's view and evolving capacity? By conducting a rights analysis, one should consider the 'impact' that any such intervention and/or action might have upon a child's right to have their views heard. If children are holders of rights (which according to national law and policy they are) then they must have the opportunity to exercise those rights. Eekelaar (1986) proposes that children have three kinds of interests and these are:

- Basic – being protected, fed and sheltered;
- Developmental – being allowed and helped to reach potential; and
- Autonomy – being given a say in decisions about one's life.

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Eekelaar (1986) argued that these three areas are not equal and interchangeable, but rather they are 'hierarchical'. In other words a child would generally not be allowed to insist on exercising choice over matters that exposed him or her to serious danger. Eekelaar qualifies his notion of autonomy by saying that as a child develops he or she should be granted more autonomy and as they develop a 'longer term vision of the world'. Ironically, as Cooper (1998) points out, it is adults who determine when a child has developed 'sufficiently' to be given more autonomy.

There is a great deal of debate in the literature about age and its role in determining the extent to which children are involved in decision making – particularly in relation to decisions about their best interests. A child's chronological age and level of maturity are normally considered as 'benchmarks'. Firstly, in determining how a child or young person is involved and secondly, in relation to the weight given to such input in the outcome of the process. Both the UN Convention and the 1995 Act make reference to age and maturity in this respect (a more detailed discussion is found in Chapter Four [Legal Framework]).

Although this present study is underpinned by a 'social model' of childhood, it also recognises that not all differences between children and adults are 'socially constructed'. As James and Prout (1998) describe:

*Compared to biological immaturity, childhood is neither neutral nor universal....the immaturity of childhood is a biological fact, the way in which that immaturity is understood and made meaningful is a fact of culture.*

(p 7)

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Thomas (2002) surmises development as an outcome of a process and there are three factors that interplay and these are: genetic material (some of which is common to all and others which are individual); the environment in which the growth takes place (which is multi-layered); and the individual's own adaptive capacity.

At the extreme ends of childhood (for infants and older teenagers), it is less complicated to determine the extent of a child or young person's involvement in decision making. As Marshall (1992) points out, the older the child the more difficult it will be to implement a decision against the expressed wishes of the child. Indeed, there is case law that supports this point as seen in a recent case in Scotland. The Sheriff Court of Lothian and Borders at Edinburgh heard a case in which the Local Authority was applying for a Parental Responsibilities Order for a ten year old boy. This child had been living in foster care for two years and his foster family had made a long-term commitment to him. It was not considered likely that he would return to the care of his mother, therefore the Local Authority lodged an application for a Parental Responsibilities Order. However, the child in this case was not in favour of the application and he maintained that he was deeply attached to his mother and he wanted to return to her care. Furthermore, soon after this application was lodged his placement with this 'long-term' family broke down and he was moved to a residential placement. When the matter was heard at the Sheriff court, the young person (then aged twelve years) was given the opportunity to meet with the Sheriff in Chambers where he expressed his views as noted above. He was made aware of his rights under the C(S)A 1995 and he was assisted in ensuring his

ability to exercise these by the children's rights officer from the local authority. In this case, the application was refused on the basis that a long-term plan without the young person's co-operation would be ineffective. An expert in foster care, Professor John Triseliotis, who testified during the proceedings both influenced and supported this decision. Professor Triseliotis stated that by granting such an order, this young person's situation will only be exacerbated and it would likely alienate him from the positive relationships that he did have with his social worker and mother and that without his co-operation, this long-term plan would not be successful.

Despite the insight offered by the above case, it is the intervening years between infancy and adolescence where uncertainty persists on the extent of children's participation in decision making (Thomas & O'Kane 1998; Cooper 1998). Under Scottish Law, children over the age of twelve years are presumed to have sufficient maturity to express a view on matters affecting their lives (The 1995 Act s. 6 (1))<sup>11</sup>. This does not, however, imply that the views of children under twelve years should not be considered in decision-making (Hill & Tisdall 1997). A child's age and maturity should be considered, however these factors ought not to serve as excuses for not considering the views of younger children or those with learning difficulties (Hill ed 1999). Thomas and O'Kane (1998) conducted a study that considered

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<sup>11</sup> The 1995 Act s. 6 – Views of children (1) A person shall, in reaching any major decision which involves – have regard so far as practicable to the views (if he wishes to express them) of the child concerned, taking account of the child's age and maturity, and those of any other person who has parental responsibilities or parental rights in relation to the child (and wishes to express those views); and without prejudice to the generality of this subsection a child twelve years of age or more shall be presumed to be of sufficient age and maturity to form a view.



the participation of looked after children aged eight to twelve years in planning meetings. Their study found that of the 225 children who took part, only 50% of them actually attended planning meetings on a regular basis.

Also notable, a recent case *Shields v. Shields* (2002) GWD 5-143 held that 'age' in and of itself was not an enough reason to not listen to a child – the court must also consider the opportunity the child had to express a view. In this particular case, a residence and a specific issue order were requested from the court, so that a child could go with his mother to live abroad. The child in this case was seven and half years old at the time. The case was appealed to the Sheriff Principal, who commented negatively on the lack of attention given to ensuring the child had an opportunity to state his views. The child had not been served with papers and the Form 9, without any further justification recorded other than the boy's age. However, the Sheriff Principle refused the appeal citing that it would 'have to be that no Sheriff acting reasonably in the circumstances could have refrained from seeking the views of an eight year old child'. On appeal, the Court of Session did not accept this reasoning, in that the child had an 'absolute right to an exercise of the discretion in question' and 'it was insufficient' to refer to a hypothetical situation. In his judgment, the Sheriff commented on two key factors. First, the changing circumstances of the child should have been considered in that the child was seven and a half years when the proceedings began, but nine at the time of the appeal and secondly, that the only 'proper and relevant test' for affording a child an opportunity to make known his/her views is that of practicality, in others words how a child should be given the opportunity will depend on the child's circumstances, which will include (but is not



limited to) the child's age. The case cemented the relevance of child development and changes over time into family law considerations, both in terms of the time frame of the court procedures itself and how the court procedures should take account of the child's competencies (Tisdall et al 2003). The point is particularly relevant to consider in permanency planning for looked after children, because as this present study will show – it is also a process which takes place over time.

Most studies looking at the participation of looked after children in planning meetings have indicated that the most variance around participation rates occurs in middle childhood and there is considerable uncertainty in practice on how to effectively include children in this age range in decision-making in child protection and child care (Thomas and O'Kane, 1999). Given this gap in the literature and practice, this present study is focused on the participation of looked after children between the ages of eight and twelve years in the decision making process on their permanent (*long-term*) plans.

Rights rhetoric often assumes adversarial positions (Bretherton 2002). In other words, it is one position pitted against another as with this present study, a child's right to participate is measured against their right to be protected. However, this was not the intent of the UN Convention (Landsdown 2001; Bretherton 2002). Rather it was designed to create a climate *"in which children for the first time were acknowledged by the international community as holders of a specific body of identifiable rights, not only in the more traditional areas of prevention, protection and provision rights but also acknowledging their participation rights"* (Van Bueren ed 1993. pp. xv). Giving children rights to participate is not about giving them complete control. But

as Lansdown (2001) argues that in upholding children's human rights, one must move away from the view that adults alone can determine what happens in children's lives without regard for the children's experiences and aspirations. Furthermore, a commitment to children's rights does not mean abandoning their welfare, rather it means promoting their welfare by adhering to human rights standards defined by international law.

### **Protection and Participation: are they compatible?**

On face value, a child's right to participate and their right to protection may appear contradictory. Some have questioned, how can children have rights of protection, as well as rights of self-determination (Hodgson in Shemmings 2000)? However, the intent of both the UN Convention and the 1995 Act is not to give children complete autonomy – rather it is afford children the opportunity to be heard in matters that affect their lives and for those views to be given due consideration in the decision making processes. As Marshall (1997) describes *"the right to participate does entail the power to influence, but it involves making a contribution to the decision making process, rather than controlling it. The right to participate is balanced by a continuing emphasis on the right to be protected"* (p.2). Despite this view, debates on these two principles continue to be polarised (Tisdall 1996). Dominant constructions of childhood appear to portray children as being 'held' under protection whilst being 'released' towards independence (Cooper 1998). Yet, there is a distinction to be made between a young person being involved in a decision and actually making the decision. Shemmings (2000) argues that in professional practice there is a tendency to speak of these as one and of the same.

Purdy (1992) argued against the position that children should have equal rights of self-determination as with adults. She maintains that children 'need protection', while they learn to exercise sound judgement and that adults have the responsibility to provide children with care and protection until they can look after themselves without the risk of physical and/or emotional harm. This position has come under considerable criticism for suggesting that unlike children, adults have achieved full rationality and therefore there is no longer a duty to protect them from their own mistakes. However, this fails to recognise that some adults also lack capacity and make irrational decisions, which may not be to their benefit. Furthermore, it assumes that development terminates with the arrival of 'adulthood' (Thomas 2002).

Having children participate in a system that is set up to protect them presents particular challenges (Schofield & Thoburn 1996). Some argue that Articles three (protection) and twelve (participation) of the UN Convention are not compatible; whilst others contend that they can and do exist together and can be fully implemented into practice (Schofield & Thoburn 1996). The preamble for the UN Convention states, "*childhood is entitled to special care and assistance*", yet at the same time, children, are now being conceptualised as having more individuality, autonomy and rights (Hill and Tisdall, 1997). This dichotomy raises many questions, such as: (i) how do you determine when a child is capable of forming a view, (ii) what criteria is used when determining whether or not a child is capable of forming a view, (iii) who decides this, (iv) if a child is unable to express a view, how is their position represented and subsequently represented in any proceedings? This present study will explore questions such as these ones.

Sawyer (1999) at the University of Bristol conducted a compelling examination of the potential dilemma between Articles three and twelve of the UN Convention. Her research considered whether or not the person who will be most affected by the outcome of a case, could also effectively inform and give views to a Judge (or Sheriff in Scotland) and other persons who actually make the final decision. Her paper suggested that it is a particularly important point to consider when that most affected person is a child (Sawyer 1999). The UN Convention and current Scottish Law give children greater rights to participate in decision-making, however this may also put them in situations where they are in opposition to their parent's wishes and indeed in opposition to what has been defined as 'in their best interests'. Children's rights have been enhanced on one level, in terms of greater recognition of their individuality. However, this must also be considered in terms of the potential conflicts that arise as a result of these rights and the impact that this may have upon a children's participation in decision-making.

There is a growing body of research evidence which suggests that most practitioners in the family justice system (court welfare officers, guardian ad litem<sup>12</sup>, solicitors and judges lack the necessary skills and understanding for effective, direct face to face contact with children (Hallett & Murray 1998;; and Lowe & Murch 2001). Although the majority of these studies are set in an English context, the findings have relevance to practice in Scotland.

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<sup>12</sup> Guardian ad litem are court appointed officials who represent the views and interests of looked after children in England and Wales, when a Local Authority instates any care proceedings. There is not an equal equivalent in Scotland.

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Lowe and Murch (2001) helpfully summarised the main areas of concern which emerged in relevant studies and these were:

- Children are not used to being listened to (Schofield & Thoburn 1996; James & James 1999). They cite particularly British children– ours is a culture which does not particularly like children - children should be seen and not heard;
- Some adults have difficulty listening to children. Many reasons are offered including: a fear that adults have that they will upset children if they talk about difficult experiences, such as separation and divorce (could be equally applied to permanency planning etc.); Hunt and Lawson (1999) suggest that many professionals lack the training and experience in talking to and listening to children;
- Neale (1999) describes how adults view children as dependent and less powerful and that adults interpret what children say;
- Slater and Piper suggest that adults protect themselves from their own vulnerabilities by projecting them (unconsciously) on children and to keep that anxiety contained. In other words adults rationalise that it is vital to not listen to children's own construction of their needs, and instead act as if they know what children's best interests are better than they do; and
- Lowe and Murch (2001) suggest that many adults including welfare professionals – judges, solicitors, etc... misinterpret participation with decision making and that by asking a child what they think, they are asking them to decide and as such that is seen as inappropriate.



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James and James (2003) conducted a study '*Constructing Children's Welfare: A Comparative Study of Professional Practice*', which found that children's voices were not being heard in family proceedings; despite family court advisors adopting practices that were specifically tailored to the needs of children. They found that the lack of children's voices in proceedings was not so much about bad practice; rather it was more about the way in which adults understood the abilities of children to form and express views about their family lives. The consequence of which was that the child's views were not being sufficiently presented to the courts, in the context of family hearings. The study made the following conclusions:

- People working in the family justice system had a real commitment to trying to improve the lives of children, but were often unhappy with the training they had received to facilitate this;
- Attitudes and ability to understand a child's world from their perception and using this when interpreting a child's views and wishes;
- Practitioners must decide what from the child's views actually goes into reports – while some use direct quotes, others interpret what the child has said – this study suggests that what is happening here is putting the child's words into the context of what is 'normal' and 'acceptable';
- The institutional framework of law is based on adult perception and understandings; and
- Children often wish to be more involved than they are.



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The Joseph Rowntree Foundation supported a research study which carried out a review of children's views on their involvement in decisions about their well being. Its findings complement and support findings of others mentioned above. They were:

- Children are unlikely to talk to outsiders about family issues, as this may be seen as disloyal and liable to lead to the escalation of problems;
- Professionals were seen as being interventionist, rather than supportive;
- The discussions that professionals had with children often felt like interrogations;
- Adults were frequently experienced as judgmental and intrusive in their approach; and
- Discussions between adults and children were often not treated as confidential, which inhibited the child's ability to engage.

Arguably, adults with responsibility must consider whether or not there are decisions that are too difficult to ask a child to be effectively involved in making (Thomas 2002). However, how is this 'adult power' reconciled with a child's right to be consulted on matters that directly affect their lives – no matter how difficult? Cantwell and Scott (1995) considered the work of court welfare officers, who identified concerns about seeking the views of the child during a time of 'stress' and that in fact it may be asking too much of children - 'a child ultimately needs to know that others will take responsibility for caring for him or her'. Furthermore, they suggest that by

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seeking the views of the child, you may in fact be 'isolating the child from those around them'. Moreover, Sawyer (1999) argues that exercising legal rights in the family context has the potential to do lasting damage to children's welfare outside the context of the legal process. The notion that children may be able to contribute to make decisions about their well-being is a relatively new one. The Victorian model of the child that should be heard and not seen still may seem perverse to some but to others it still is maintained, particularly in the context of decisions about their well-being. In other words, does inviting children's participation in welfare based decisions, in fact, put their well-being in some jeopardy (Sawyer 1999)?

Trinder (1997) in her study titled 'Competing Constructions of Childhood: Children's Rights and Wishes in Divorce' argued that children are typically *"classified as either subjects or objects, competent or incompetent, reliable or unreliable, harmed by decision making or harmed by exclusion, wanting to participate or not wanting to participate."* (Trinder, 1997, p.301) These types of dichotomous statements fail to consider the developmental perspective of a gradual acquisition of competence. Trinder (1997) argues there is a need to change the attitudes of professionals working with children to allow children to move through the maturational process of gaining more power and autonomy over their own lives. This point is particularly critical when considering looked after children, whose lives progress with a multitude of significant decisions being made by a number of different people; thus, making it an even greater challenge (Thomas 2002).

Tisdall et al (2003) conducted a feasibility study 'Voice of the Child under the Children (Scotland) Act 1995: Giving due regard to children's views in all

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matters that affect them', which also found similar themes to the abovementioned studies. That study only considered Part 1 of the Act in relation to family law proceedings (in other words, children affected by divorce/family separation), yet it had three interesting findings relevant to this present study. First, none of the children had their views 'formally' considered in court proceedings either by legal representation or by using other mechanisms and any participation on the part of the child, tended to be initiated by their parents. Secondly, when the children were asked if they wanted to be involved they identified feeling hesitant to 'burden' their parents during what was a stressful time (separation or divorce). Moreover, they thought that they would be asked to choose which parent to live with – and that was something they did not want to do. Thirdly, the study highlighted a need to identify mechanisms to keep children informed of the processes and the outcomes of the legal proceedings, and that this was a significant factor to the children feeling involved in the process.

These aforementioned studies consider the issues surrounding the facilitation of children's participation into decisions about their well-being in matters, which are dealt with in the context of private families. However, it could be argued that the complexities in balancing children's rights of protection and participation, as identified above, are compounded when one considers the involvement of looked after children as this present study will consider. A small number of studies have considered the question of children's involvement in child protection conferences and related processes (Shepard 1994; Thoburn et al 1995; and Thompson 1998) and others have studied children's involvement in care plans and review meetings (Thomas

& O'Kane 1998; and Walker 1999) The importance of children and their parents being involved in local authority decision making and planning has been recognised for some time, yet this has not been without controversy (Parker 1971; Kendrick et al 1991). However, direct involvement of children is a relatively recent initiative and the literature and practices around it are just beginning to grow.

Thomas and O'Kane (2000) conducted a study, which considered the participation of 'looked after' children aged eight to twelve years in child protection proceedings. They deliberated reasons why some children are more likely to attend meetings than others. This study made two very important points with respect to looked after children: (i) 'looked after' children are subject to more decisions than their counterparts who are not living away from their families (e.g. where are they going to live, for how long, what school are they going to attend, how often will they see their parents and siblings etc.) and (ii) 'looked after' children have many adults involved in their day to day care. This could include social workers, managers, foster carers, psychologists, and children's panels. There could be up to a dozen people involved in contributing to decision making for that child, some of whom may be strangers. As such, where and how does a child fit into the, mixture of adults who have responsibility for contributing to and making decisions in a child's best interest?

Munro (2001) conducted a study titled *Empowering Looked After Children*, in which she considered the degree of power and influence a sample of looked after children felt they had in decision making. Her study found that looked after children felt that they were able to influence trivial decisions about

themselves, but that professionals would not let them get involved in the 'big issues', which were the ones that *"really mattered to them"* (Munro, 2001, p. 129). The children in this study had three main criticisms and they were (i) frequent changes in social workers, (ii) lack of an effective voice at child care reviews, and (iii) lack of confidentiality and linked to this was the lack of having someone they regarded as a confidant (Munro, 2001).

Shemming (2000) conducted a study where he considered professional attitudes towards the participation of children in decision-making in child protection proceedings. He referred to this as 'uncharted territory'. He explored the following two issues: (i) the age at which children should participate in decision-making, and (ii) should children participate in child protection proceedings? Shemming's findings were comparable to others who have conducted similar research, whereby there was a general sense among professionals that the attitudes towards children's participation in decision making was 'I agree with it in principle, but...' (Raymond 1989, Shemming; Farmer and Owen 1995; Thoburn et al 1995; and Marshall 1997). Given the recent legislative changes and the increased emphasis being placed on children's rights, it would seem crucial to consider the attitudes of the professionals who are working on the front lines with children and how these attitudes impact on their practice. As such, this study will consider the views; attitudes and experiences of the professionals who play a role in the permanency planning for looked after children.

Hoggan (1991) a social worker practitioner, conducted a small scale study in Scotland that considered the role of looked after children in permanency planning. Although her initial intent was to consider the role of children, her



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study actually ended up commenting on what was the 'role' which adults 'enabled or indeed permitted' children to be involved in a genuine way. While this study was not a large scale academic one, it did offer significant and relevant conclusions for the emerging research questions in this study. She drew on Adler's framework (1985) to analyse the roles which children had in the development of their permanency plans. This particular framework suggests three stances from which children's participation can be considered. They are - protectionist, paternalist, and liberalist. The protectionist view argues that children should be given increasing responsibility in proportion to their age, understanding and stage of development. The paternalist view suggests that parents should have more or less total authority over their children and the child liberation argues that children should have rights completely equal to adults. The study considered the involvement of children aged five to twelve years and concluded that these children experienced a more 'paternalist' stance from the adult authority than was intended by legal framework and social attitudes of the day. She argued that that were a number of factors which contributed to this situation and these included:

- Lack of resources and a need to just be 'honest' with children about decisions which are constrained/directed by what resource is available vs. what someone may want/need etc...;
- A need to have open and real dialogue with children versus 'persuading children to accept adult decisions' (in other words how we communicate with children);



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- Avoiding pain – in other words, the helping adult must understand that the recovery to healthy living involves pain, there is no short cut;
- Adult power – especially in a process such as adoption which involves the transfer of parental rights – transfer from one adult to another- often in an adversarial way; and
- Children who are in long-term care have often suffered abuse, loss or neglect and they may have developmental delays or display difficult behaviour and there may be assumptions made because of this that a child may not be able to (or is unable to) express or hold a valid view.

Some studies have considered the involvement of looked after children in care plan reviews, as an obvious place for children's participation. However, these studies – despite their focus on reviews, contend that genuine involvement is a process and should not be confined to reviews, and as Lyndsay (1989) states *"Children and young people in care, should be regularly consulted about issues which affect them"* (p.9). Studies conducted in the 1980's suggested that very few children actually attended their reviews. For example, Sinclair (1984) found that in only 2.1 % of all reviews considered in this study, did children actually attend. Similarly in another study involving 145 children in long-term foster care, only 9 children had attended their reviews in the last 12 months (Lowe et al 1984). In Scotland a more progressive picture was suggested. Denham (1985) found that younger children were not normally present at child care reviews, while some older children would attend at the end of the meeting. Thomas and O'Kane (1999) conducted a study into the participation of looked after children aged 8-12 years in planning meetings. Their study found that of the 225 children who took part, only 50% of them actually attended planning meetings on a

regular basis. However, there is considerable scepticism around the true extent of children's participation by just merely being present.

In the study *Empowering Looked After Children*, it identified the child's developmental progression as being a significant factor when considering how their views are sought and heard in the decision making process. The author referred to this as the 'evolving capacity of the child' and indicated that this was a basic principle of children's rights (Munro, 2001). She goes on to discuss how this implies that it is reasonable that children are 'informed and guided' and that as they develop into adolescents and adults, they gradually take more responsibility in matters that concern them. Munro argues that fostering children to take more responsibility for their own lives is a crucial stage in their development and as such, with looked after children "*helping to empower them is not just an ethical requirement, but, equally, a developmental task*" (Munro 2001, p.133).

Reugger (2000) conducted a study titled '*Children's experiences of the Guardian ad Litem service in Public Law proceedings*' and although this study is based in England it made some pertinent observations in relation to balancing a child's right to protection against right to be involved in decisions. In England where a child is a subject of public law proceedings he/she is assigned a Guardian ad Litem [hereinafter referred to as GAL]. The role of the GAL is to spend time with the child to establish their views on the proceedings, which they are then required to present to the court, alongside the GAL's assessment of what is in the child's best interest. For this study, Ruegger interviewed 47 children on their experiences of the Guardian ad Litem service. Generally she found the children (71%) liked the system and

liked having someone to listen to them, and having someone to explain to them how they could express themselves in the court process. In Scotland, as Chapter Four [Legal Framework] will explore in greater detail, looked after children do not automatically have an independent representative throughout the decision making and subsequent legal process around their permanent plan; rather it falls to their allocated social worker to represent their views in various forums, explain the process to them and to comment on what is in their best interests. One wonders if this is actually a conflict and if it actually facilitates or impedes looked after children's involvement in decision making?

Thomas (2002) conducted two noteworthy studies which considered the participation of looked after children. He concluded that there are five areas that require consideration when working with children in relation to their participation and these are:

1. There should always be a *presumption of competence* and it is dangerous to underestimate children's competency, particularly in relation to their ability to reason, conceptualise and understanding consequences;
2. Children's understandings are likely to vary with their experiences and as such, it is important to consider the experiences and understandings of the individual child, when considering how to best involve them in decision making. A child's ability to engage and contribute to a discussion and decision making depends on how issues are explained to them, the context in which this takes place, and the meaning that this has for the individual child;

3. A child's ability to engage in decision making will increase with practice;
4. Allowing children to exercise some control over what is happening to them, will of itself have psychological benefits for that child's maturational development.
5. Do not underestimate children's worries or sense of 'bewilderment' and how this then subsequently impacts on their ability to contribute to decision making - in other words – balance the impact of being stressed against a child's ability to contribute to effective decision making and that is hard for children to exercise autonomy in a world that is controlled and defined by adults.

For the 'looked after' child there are so many layers of decision-making and it may not always be clear how the voice of the child is heard in this picture. Children clearly have a right to be heard and have their views considered when decisions are being made about their lives, particularly when that decision is a life long one. The literature in this area clearly points to the many dilemmas that exist in translating children's rights into practice, particularly in the case of 'looked after' children and it has been highlighted as an area for further study and exploration.

The child protection system is geared towards protecting children's interests, but what about facilitating their participation and genuinely hearing children's views? Marshall (1991) identified a series of relevant questions which challenge local authorities to consider how they will elicit, respect and take seriously the views of children. These questions included:

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- Do children have to be a certain age before they are involved in decision making?
- Can we be sure that child's views are informed views?
- Does the child really understand the situation?
- Is it right to place on the children the burden of the power of choice?
- Is it ethical to pretend there are options when there may be none?
- Are there really none, or are we just unwilling to or unable to provide them?

Landsdown (1995) argues that the transfer of responsibility in decision making from families to a wider public sphere has its roots in welfare and protection based philosophies. She goes on to say that this expansion of the number of adults with statutory responsibilities to children and who have the powers to contribute to and impose decision making on children's lives has resulted in children being locked in a paternalistic structure in which adults are the actors, not the children themselves. Consequently she contends that public policy which is based on a welfare protectionist model continues to restrict the rights of children to autonomy, self determination and effective participation (Landsdown 1995). The present study will consider this argument in relation to current policy in Scotland on permanency planning for looked after children.

For the purposes of this present study, I am particularly interested in the views of children aged eight to twelve years. From reviewing the literature it was clearly an area where questions remained in relation to the many dilemmas discussed throughout this current chapter. Most studies (as indicated earlier) looking at children's participation have indicated that the



most variance around participation rates occur in middle childhood and there is considerable uncertainty in practice on how to effectively include children of this age range in decision-making (Thomas & O'Kane 1999). Given this gap in both the literature and practice, this present study will consider looked after children in middle childhood, ranging in age from eight to twelve years old.

### **'Permanency planning' for Looked After children**

It is widely evidenced that children need a secure base which can provide support and guidance to promote healthy growth and development throughout their childhoods and into early adulthood (Maluccio et al 1986; Schofield et al 2000). For the great majority of children this is best achieved within their birth families (Triseliotis 1991; Smith 1995). Yet for some children circumstances are such that growing up within their birth family networks is not always possible or even desirable. Where this is the case in the United Kingdom, statutory agencies (in Scotland – local authorities) have responsibility for locating, securing and supporting alternative family and/or residential environment(s) for children; that could also provide security and promote a child's growth and development. Permanency planning is a term used in child care literature, policy and practice to describe the planning, decision-making and legal processes involved in securing a long-term plan for a child.

In Scotland and indeed elsewhere in the United Kingdom, Margaret McKay<sup>13</sup> is widely credited with formally introducing permanency planning into child care practice in the early 1970's (O'Hara & Hoggan 1988). At that time, she

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<sup>13</sup> Margaret McKay is the current Chief Executive of Children 1<sup>st</sup> in Scotland.



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was working as a social worker in what was then Lothian Region. There, she and colleagues become frustrated with the increasing numbers of children languishing in care with no definitive plan for either a return home or into a long-term, secure alternative. She described non-planned, long-term foster care as "*fraught with insecurity and uncertainty for children*" (McKay 1980: p. 19). At the same, she and others noted how the profile of children requiring permanent care was changing (McKay 1980; O'Hara & Hoggan 1988). It was no longer the case that large numbers of babies required adoptive families; rather there were increasing numbers of older children in care for extended periods of time, with no defined plan for their upbringing. Many of these same children were known to have experienced abuse and/or neglect and more than likely had been through repeated failed attempts at rehabilitation with their birth families; yet most remained fiercely loyal and connected to their birth families. For many of these children, placing them for adoption was not seen as a viable or desirable option (O'Hara & Hoggan 1988).

Influenced by research, literature and theory on permanency and child development and by direct observations of practice, McKay and colleagues introduced a 'home-finding service' in what was then Lothian Region. Drawing specifically on Rowe and Lambert's (1973) seminal study *Children who Wait*, which highlighted how the likelihood of successfully rehabilitating separated children to birth families, reduces significantly after 6 months of the child being in care; the service was underpinned by the principle that no child under 10 should be in care for more than 2 years without a clear and agreed upon plan for their care (McKay 1980).

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The 'home finding service' was guided by a clear permanency planning policy; based on the premise that wherever possible, children should first and foremost be supported and maintained in their own homes. However, should they at any time be received into care, they should be returned home as soon as possible. Whilst a child is in care, the Social Work Department should actively work with the birth family, the child and their carers to not only maintain the relationship but to assess and address the concerns which led to the child's admission to care. Where a return home is not achievable, adoption was the preferred option, unless one of three scenarios was present: 1) the child's parents are committed to and involved with the child and this relationship is seen to be in the child's interest; 2) the child is over the age of 10 and does not wish to have his or her relationship with his or her parent severed; and/or 3) the child's foster parent is not in a position to adopt, but moving the child from this home would result in more suffering for the child (O'Hara & Hoggan 1988). McKay (1980) described the service as being underpinned by three explicit principles. These were:

1. *No child should grow up without people whom he looks on as his parents, either his own natural parents or permanent parent substitutes.*
2. *His parents (or parent figures) must be able to provide 'good enough care'; to meet his need for love, security, and responsibility appropriate to his stage of development, and stimulation.*
3. *In planning for children in care the local authority should give first consideration to the need to safeguard and promote the welfare of the child throughout his childhood.*

(p. 19)

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Despite the changing profiles of children (as described above) requiring long-term care and practices such as those introduced by McKay and colleagues, as permanency planning gained prominence in child care practice, it quickly became associated with either returning children home or placing children for adoption (Short Committee 1984; McAuley 1996). Policy and practice were moving towards models which suggested that if birth families were not providing adequate care to their children and/or were not responding to statutory interventions within short time frames; it was thought best that children should be placed for adoption without further access to their birth families (Lockyer & Stone 1998). However, not all proponents of permanency planning meant it to be exclusive to adoption planning, rather it was intended for *"clarifying and deciding on the purpose of a given placement and, during temporary care, actively seeking and implementing a plan for permanence"* (Steinhauer 1991 p. 222). Although it was recognised that for some children, adoption provided greater stability, it was recognised that for some children it was not always appropriate (Triseliotis 2002).

Professor Triseliotis (1982) compared young adults who had grown up in foster care or adoptive home. Although this study found greater uncertainty with foster care, it concluded that long-term foster care was an important resource for children and that agencies should focus on making children and foster carers feel as secure as possible. As such, policy and practice shifted from a primary focus on legal security to ensuring a sense of security - as *the* vital component in permanency planning (McAuley 1996).

More recently, Professor Triseliotis defined permanency planning as the process *"to provide each child with a base in life or a family they can call their own,*

*and more hopefully a family for life"* (in Hill & Shaw [ed] 1998: p.13).

Increasingly, convincing evidence is being established which supports long-term fostering as an option with significant advantages for children who cannot return to their birth families (Triseliotis 2002). However, differing views continue to be evident in both policy and practice regarding issues such as: timescales in permanency planning (i.e. when is the critical decision to make an order permanent for a child and their family); ongoing contact with birth families and the differences between adoption and long-term fostering (Lowe & Murch 2001; Cabinet Office 2000; Triseliotis 2002). Although the focus of the present study is on children's participation in permanency planning, it will explore the practical and legal processes which lead to permanency for looked after children. In doing this, issues such as these aforementioned are examined.

Currently, in Scotland, where a child is looked after<sup>14</sup> (discussed in greater detail in Chapter Four [Legal Framework]) away from their birth families by a local authority, there are four main options for permanency<sup>15</sup>. The four options for children are: 1) return home; 2) be made the subject of a residence order under s. 11 of the 1995 Act, naming the individual carers and giving them parental responsibilities and rights; or 3) be made the subject of a parental responsibilities order (PRO) under s. 86 of the 1995 Act, giving the

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<sup>14</sup> A child is looked after by a local authority if he/she is: being provided accommodation under s.25 of the 1995 Act; the subject of a supervision requirement; is the subject of a place of safety warrant, protection order, a parental responsibilities order; or is the subject to an order from elsewhere in the UK.

<sup>15</sup> Options 1-3 are not 'permanent' as such and could be reversed by Court Orders should the situation for the child change. Adoption is the only legal order which is irreversible.

local authority parental responsibilities and rights; or 4) be adopted, with or without a freeing order first (Plumtree 2003).

Unavoidable tensions persist around children's best interests. Are they best served by restoring them to their birth family? Are children more likely to have their developmental needs met by a permanent placement, excluding their birth families (adoption) and which children do best with something in-between these two extremes, such as planned permanent placement with continuing access to their birth families (long-term foster care)? How these decisions are made is complex, emotional and multifaceted. The present study will consider how the participating local authority structures its processes for deciding the permanency plans of looked after children and will focus particularly on how the participation of children is incorporated in both policy and practice.

### **Conclusion**

Throughout the twenty-first century and into this new century, children have gained rights of both protection and participation. Now more than ever, children and young people are being asked to actively contribute in matters which affect their worlds. Having said this, it is widely acknowledged that achieving this in practice is infinitely more complex when those decisions are about their well-being and welfare. This is particularly the case where the children are 'looked after' and have many adults outside their birth families responsible for their care and welfare.

The literature reviewed in this chapter raises many questions. For example, what philosophical and theoretical construct of children and young people

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underlies current law and policy; how is it then translated into meaningful practice; how do looked after children differ from non-looked after children in relation to their participation in welfare decisions; are adults (parents and professionals) uncomfortable with involving children in decisions about their well-being and does this inhibit children's participation; are current forums (such as meetings and courts) conducive to facilitating children's participation and how genuine is that involvement; what do children themselves want in terms of information and degree of involvement; and finally who decides and controls when children should be involved and what factors influence this?

Previous studies referred to in this chapter have explored these types of questions looking at many significant areas of children's lives. The present study considers questions like these specifically for looked after children (aged eight to twelve years), who will be growing up in the care system away from their birth families.



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### Methodology

#### Theoretical framework

Since the late 1980s there has been an increasing interest in *"listening to children's experiences and viewpoints, as separate to and different from their adult carers"* (Christenson & James 2000:136). In the United Kingdom, this position was strengthened politically with Elizabeth Bulter-Sloss's 1987 'Report of the Inquiry into Child Abuse in Cleveland'<sup>16</sup>. In this seminal report, professionals were urged to not just treat children as 'objects' of concern, rather she argued that preoccupations with fixed ideas about what was in children's best interest had actually led to professionals and others disregarding the viewpoints and expressed wishes of the children themselves (Hill & Aldgate 1996). This increasing emphasis in most western societies on how it was important not only to 'see' children, but also to 'hear' them, was firmly established by the United Nations Convention on the Rights of the Child in 1989 [hereafter the UN Convention] and has since been reflected in key Scottish child care legislation, namely the Children (Scotland) Act 1995 [hereafter the 1995 Act]. Both the UN Convention and the 1995 Act share the overarching principle that the views and wishes of children must be considered and taken into account in matters affecting them, subject to the child's age and maturity.

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<sup>16</sup> The inquiry was conducted following serious concerns being raised about how child abuse allegations were handled. The terms of reference for the inquiry were to: *"examine the arrangements for dealing with suspected cases of child abuse in Cleveland since 1 January 1987, including cases of child sexual abuse and to make recommendations..."*

At the same time, childhood was emerging as an area of independent sociological study (Quortrup 1991; James & Prout 1997; Hill & Tisdall 1997; and O'Kane 2000). This development was closely linked not only to the children's rights movement<sup>17</sup> but also to a number of groundbreaking social research studies, in which traditional models of childhood are questioned (James & Prout 1990; Hill et al 1996; Morrow & Richards 1996; Hill & Tisdall 1997; and Thomas 2000). These aforementioned studies challenged models of childhood found in dominant psychological and medical research in which the discourses were underpinned by theories of children's inferior and dependant status because of their evolving development (James & Prout 1990). Although considerable knowledge about children which remains influential today emerged from more traditional research (e.g. Bowlby's work on attachment theory), critics began to debate how these approaches limit a more holistic and social understanding of children's experiences (Foley et al 2001). Hood et al (1996) further argued that psychologically based research generally depicts children as 'incompetent' and as such, it tends to ignore children's own construction of their realities and priorities. Consequently, outcomes of such studies only reflect adult conceptions, descriptions and interpretations of children's lives (Butler & Williamson 1995; Hill & Tisdall 1997; Thomas 2000; Thomas & Beckford 1999; and Lowe & Murch 2002). As Hallden (1991) argues, the sociology of childhood offers a conceptual shift, whereby the child once seen as a 'project' and the child as 'becoming' something; has given way to the child as 'being' and as agents in his or her worlds.

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<sup>17</sup> See Chapter Two (Literature Review) for further discussion on the children's rights movement.

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In the 1990's traditional academics came under increasing criticism for treating children as 'objects' of study with little regard being given to what children themselves might identify as being meaningful or significant to their lives (James & Prout 1990; and Hill et al 1996). From critiques such as this, a social construction of childhood emerged. According to Goldson (2001), this development has roots in the work of the French historian Philippe Aries (1960). Aries' principal argument was that childhood was socially constructed and *"temporally, spatially and culturally determined"* (Goldson in Foley et al 2001: 35). Although Aries work was not without criticism, it is often cited as being influential in how the theorisation of children and childhood has evolved and gained the prominence it has today (James & Prout 1997; Jenks 1996; and Foley et al 2001).

The social construction of childhood has come to be regarded as an innovative paradigm through which the voices of children can and are heard (James & Prout 1990; and James & James 1999). Hill and Tisdall (1997) describe it as *"an evolution through which it has been recognised that children are not simply passive recipients of adult's models, knowledge and values, but contribute actively to the creation of social worlds in which they live, both individually and collectively"* (1990: p 1). This shift in thinking challenges adult researchers to acknowledge the diversity of children's experiences and the part that children play as social actors in shaping their own childhood experiences, rather than just to study and describe children as passive products of a particular upbringing or developmental course. Foley et al (2001) reminds us that this approach does not deny the significance of biological relationships, but shifts the focus from *"naturalistic determination to offer a critical analysis of*

*the conceptual reality of childhood within history*" (Goldson in Foley et al 2001: 35). In other words, although one should recognise the emerging capacities of children, one should also consider the fuller context of their lives, including their interpretation of it.

### **Conducting social research with children**

The emergence of a social construction of childhood, as outlined above, encouraged the growth of significant theoretical literature, which in turn has informed the development of innovative research designs and methodologies that encourage the active participation of children throughout the entire research process. Sociologists James and Prout (1990) developed such a model, which was used to underpin the theoretical basis in this present study. The following features frame the model:

- Childhood is socially constructed, i.e. it is not 'natural', but it is shaped in critical ways by the cultural and structural context;
- Children's social relationships and cultures are worthy of study in their own right, independent of the perspectives and concerns of adults;
- Children are not passive subjects of social structures and processes, but actively contribute to their social worlds and the construction and determination of their social lives, the lives of those around them and societies in which they live; and
- Childhood is differentiated by factors such as gender, ethnicity and class.

This model acknowledges that children are 'different' from adults, but contends that they are not necessarily inferior or less socially competent

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(James & Prout 1990; James & Prout 1997; Hill & Tisdall 1997; and Thomas 2000). In other words, the model challenges everyday conceptions of childhood often found in popular media, fiction and political discourse in modern western society (James & Prout 1990; and Thomas 2000). The model has encouraged researchers to consider children's worlds and experiences as children define them rather than how adult researchers interpret them to be. As such, the focus shifts from considering what adults 'do' to children and how adults see children, to what children do and how they see themselves in their worlds (Thomas 2000). Moreover, research studies informed by social models of childhood are increasingly challenging and influencing ways in which policy makers and practitioners develop legislation, policy and practice that affect the lives of children (Mayall 1994; Morrow & Richards 1996; Hill & Tisdall 1997; and James et al 1998). Consequently, a study such as this present one offers a timely opportunity to explore how a specific area reflects this model and to examine its actual impact on social work policy and practice development.

James and Prout's model also argues that the experiences of childhood are differentiated by factors such as gender, class and ethnicity. The present study considers how another kind of status - being a looked after child may also impact on a child's experience of childhood. As discussed in Chapter Two (Literature Review) looked after children are subject to particular decisions affecting their future and as well, they have a number of adults involved in making those decisions (Brannen et al 2000; Thomas & O'kane 2000; Thomas 2000; and Munro 2001). In recent years, a few sociological and social work studies have focused on the unique perspectives of looked after



children. These studies have examined and attempted to understand more fully the unique experiences of children living in public care (see Flecher 1993; Butler & Williamson 1994; Williamson & Butler 1995; Triseliotis et al 1995; Thomas & O'Kane 1998a, Thomas & O'Kane 1998b, Baldry & Kemmis 1998; Heptinstall 2000, and Brannen et al 2000). The present study is designed to further contribute to the growing awareness and understanding of how the views, wishes and feelings of looked after children are considered in the large and complex systems in which they are participants and key stakeholders. Specifically, it focuses on the experiences of looked after children for whom the local authority is making, arguably the most significant decision - a permanent plan to live and grow up apart from their birth families.

#### **Research Design**

This present study is broadly concerned with similar themes that emerged in Thomas and O'Kane's 1998 study, *Children and Decision Making*. That particular study explored how looked after children were involved in general decision making, since the implementation of the Children Act 1989 in England. The scope of their enquiry was broader than this present study and was set in an English context; however, the research approach and strategy used were influential to the design of the present study.

In developing a strategy for their study, Thomas and O'Kane were influenced by Layder's (1993) 'multi-strategy' approach to social research (Thomas 2000). Layder developed a conceptual framework for study design which also proved extremely useful in the present study. In his framework, Layder suggests that once a researcher has established the aims and



objectives of a study, she then develops a 'resource map' (Layder 1993; Thomas & O'Kane 1998; and Thomas 2000). A resource map outlines four levels of interest, which encourages researchers to think about their study and where they should be looking to gather data in support of the research question (s). The levels of interest are: context; setting; situated activity and self. Context refers to the macro level and it includes structures such as the state, legal system and social organisations. Setting refers to the organisation, setting and/or context which the study is directly concerned with. The situated activity speaks to social interactions and the meanings which are attached to them and self refers to the individuals and/or groups under study in the research.

Layder (1993) argues that a social research study is likely to have a focus in one or more of these aforementioned areas, but that the others remain in the background and that some attention to all of these areas should ultimately be addressed in any study. Furthermore, he also suggests that the historical context in which any study is set is also important and should be duly considered throughout the research. Layder's model helpfully suggests that researchers should not be bound by rigid categories of research (Layder 1993). In other words, he suggests that a researcher should not limit the gathering of data to one method or genre of study; rather he suggests that data should be gathered from those sources most likely to illuminate the questions of the study. Hence, once a resource map is established, a researcher should consider a range of data sources and methods to explore the questions of the study. This could include quantitative as well as qualitative methods; however, for this present study only qualitative

methods were used. This model was particularly well suited to the present study for two key reasons. First, it encourages the researcher to explore the wider context of the area under study and question what factors influence this. For the present study this included an examination of the historical and social developments that propelled children's rights. Second, this model encourages the researcher to look at more than one source for the data, and in the present study this was essential as it was evident early on that sample numbers were going to be low. As this chapter will reveal, various sources within the one local authority were engaged in the present study and this approach was influenced by the aforementioned model.

#### **Research Methods**

Qualitative research techniques have been proven to be useful when conducting research on areas of social work practice; particularly when the researcher also has training in social work (Shaw & Gould 2001). Qualitative research methods such as in-depth interviews and participant observation require high levels of expertise and methodological rigor in both the data collection and analysis; however they are in essence closely linked to processes of social work practice (Scott 2002). For example, interview techniques such as the use of open-ended questions and close attention to non-verbal communication used by trained social workers are similar to those used in qualitative research.

Moreover, the use of qualitative methods allows researchers to gain a greater overview of the *"whole of the culture and context under study"* (Shaw & Gould 2001: p.7). As well, they encourage researchers to collect data from the perspective of *"local actors from the inside by suspending preconceptions about the*

*topic under consideration*" (Miles & Huberman 1994: p.6). Reissman (1994) describes qualitative methods as allowing for exploration in different ways that offer *"scepticism about universalising generalizations; respect for particularity; appreciation of reflexivity and standpoint; and the need for empirical evidence"* (p. XV). One of the key objectives of this present study was to explore the experiences of children through their own voices and qualitative methods, and as Greene describes *"can effectively give voice to the normally silenced and can poignantly illuminate what is typically masked"* (Greene 1994: p.542).

Historically and culturally children's voices have been marginalized<sup>18</sup>. By committing to conduct a research with children (not on or about them), I faced the challenge of selecting methods that would best enable the children to express their views and experiences throughout the research process. Qualitative methods have been found to be more effective than quantitative methodologies at encouraging the inclusion of children's voices and their active participation in the process (Christensen & James 2000; Hill & Tisdall 1997; and Heptinstall 2000). Furthermore, there are a range of qualitative methods, which have been specifically developed and successfully used in previous studies with younger participants (Christensen & James 2000). For example, there may be instances when it would be more appropriate to use drawings and/or games with children versus more traditional straight question and answer interviews (Aldgate & Simmonds 1988; and Christensen & James 2000). Notably, creative and age appropriate information gathering has been used in direct clinical work with children for some time, as a means of encouraging them to express themselves in more 'child-like' ways rather

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<sup>18</sup> See Chapter Two (Literature Review)

than just a verbal conversation (Christensen and James 2000). Essentially, this makes sure that the research process starts with the child rather than the adult. Consequently, using qualitative methods gave me the flexibility to select and design interview methods to best suit the ages and stages of the children who participated in this present study (aged eight to twelve years<sup>19</sup>).

Qualitative research is interpretative and its main purpose is to explore ways in which people in particular settings come to understand, define and take action in their day-to-day worlds (Miles & Huberman 1994). There are well-established data collection methods in qualitative research repertoire, to allow researchers to explore particular questions and areas of practice in considerable detail (Blaikie 2000). For example: semi-structured interviews; focus groups; observations and content analysis of documents. As the discussions that follow will show, this present study used semi-structured interviews with both professionals and looked after children as well as the documentary analysis of policies and case files, as the primary methods of data collection. The reasons for choosing these particular methods are explored below.

#### **Data Sources**

There are 32 local authorities in Scotland covering rural, urban and island areas. Each has statutory duties<sup>20</sup> to ensure that all children who reside

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<sup>19</sup> There was one 16 year old who participated in the present study for reasons that are described in this chapter; in his case only verbal interview techniques were used.

<sup>20</sup> Section 22 (1) (a) & (b) of the 1995 Act states that "a local authority shall – (a) safeguard and promote the welfare of children in their area who are in need; and (b) so far as is consistent with that duty, promote the upbringing of such children by their families, by providing a range and level of services appropriate to the child's needs".

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within their area and who are found to be 'in need'<sup>21</sup> are provided with services that promote their welfare and development. The present study considered only one local authority area. There were several strategic reasons for this as the discussion which follows will highlight.

Smith (2000) argues that *"it makes little sense to try and understand a special project without reference to the local project which sustains it"* (2000: p.6). In other words, careful attention to both the context and setting under study is a critical element of any social research. This position fits nicely with Layder's model, mentioned earlier, which also suggests a focused understanding of the context in which a study is taking place is essential. As discussed in the Introduction and Chapter Two (Literature Review), the context of the present study is guided by a children's rights perspective and how this is reflected in current child care legislation and practice in Scotland. Although the same legislation and corresponding guidance provides the permanency planning framework for each of Scotland's 32 local authorities, research conducted by the British Association of Adoption and Fostering (BAAF) in 2001 found that internal permanency planning policies and procedures differed considerably throughout the local authorities in Scotland.

Focusing on one local authority area in a small scale study such as this present one, would allow for a focused 'case study' approach to be taken.

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<sup>21</sup> Section 93 (4)(a) of the 1995 Act defines being 'in need' as "is to his being in need of care and attention - (i) he is unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development unless there are provided for him, under or by virtue of this Part, services by a local authority; (ii) his health or development is likely significantly to be impaired, or further impaired, unless such services are so provided; (iii) he is disabled; or (iv) he is affected adversely by the disability of any other person his family"



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Robson (1993) describes a case study as *"a strategy for doing research which involves an empirical investigation of a particular contemporary phenomenon within real life context using multiple sources of evidence"* (p 146). The 'phenomenon' becomes the subject of the case study and it could range from an individual to a group or it could be a service or a particular programme. Robson (1993) argues that the focus of the study is generally on what contextual factors, attitudes and/or perceptions precede a known outcome.

Using Robson's framework, the 'known outcome' is a Parental Responsibilities Order as the permanent plan for a looked after child. The present study aims to explore the processes, experiences and perceptions that led to that particular outcome for a small group of looked after children at one local authority in Scotland. This chapter will detail how a series of semi-structured interviews were conducted with an adoption panel and a small sample of looked after children, how specific sections of their records (files) were reviewed and how a group of decision makers (as identified by the children) were interviewed. By keeping the sample at a manageable size and within one local authority<sup>22</sup>, I was able to gather considerable amounts of data from multiple sources. Conducting the present study in this way allowed for greater emphasis to be placed on the depth versus quantity of the data collected. Findings of the present study do not claim to be representative; rather they offer a focused exploration and analysis of the interface between specific legislation and policies on one area of social work

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<sup>22</sup> When my research proposal was considered by the local authority, I was advised that they may not have a suitable sample size of looked after children willing and able to participate in this study. Should this have occurred, this study would have incorporated an analysis of other the local authority's policies and procedures. This did not prove necessary.



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practice in one local authority area. Consequently, the findings of this present study should be treated with some caution when applying to its conclusions to practice elsewhere. However, as the later findings chapters will reveal, other significant studies have revealed similar findings and drawn similar conclusions to this one.

#### **Getting Started**

An urban local authority was selected as the location for the present study. It is one of the larger local authorities and consequently, it was more likely to have a sizable number of looked after children who were registered for permanence and/or subject to a Parental Responsibilities Order. In preparing the proposal for the present study, I contacted a local authority to establish any internal policies and procedures regarding prospective external research, particularly given the request of direct contact with looked after children. I was asked to submit a full research proposal and a clear outline of my access requests to the Research Officer.

The Research Officer and I met in person to discuss the proposal in more detail. From my previous professional experience in Canada I was aware of the inherent instabilities associated with foster care and the tendency for adults to come in and out of the lives of looked after children. My experience as a social work practitioner working with children in foster care was useful at this meeting as I was able to clearly demonstrate awareness and understanding of the likely sensitivities and ethical consideration in relation to working with and/or conducting research with looked after children.

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The section which follows details the design changes to my original proposal as a result of the initial meeting with the Research Officer at the local authority. After re-submitting an amended proposal, the Research Officer summarised it for the Director of Operations, who then gave approval for the study to be conducted with the full co-operation of the local authority.

The Research Officer referred me to a Resource Manager, who was my principle contact person throughout the course of the present study. It was her role, in conjunction with myself, to identify potential participants and to facilitate access to the professional staff, looked after children and any other information required from the local authority (such as policies, procedures and case files). The Research Officer had suggested this particular manager as she had overall responsibility for administration of one of the Adoption panels and for the ongoing resource planning for all looked after children registered for permanency in that local authority area<sup>23</sup>.

#### **Data Collection**

The data for this present study was collected in five distinct and progressive stages, with each one informing the next. Each of these phases was guided by the areas of interest as they were identified in the resource map (Appendix A) referred to earlier. The five phases were as follows:

- 1) Documentary analysis of the UN Convention, relevant Scottish Legislation and corresponding guidance, local authority internal policies and procedural manuals in relation principles of decision making and

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<sup>23</sup> At the time of this study, the local authority had two 'Resource Managers', who each managed two Adoption panels and the resources affiliated with them. This structure was undergoing a review during the time of this study and structural changes are expected to occur shortly after this present study's completion.

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Parental Responsibilities as a permanency option for looked after children.

- 2) Semi-structured interviews with all members of one adoption panel (8 in total).
- 3) Looked after children's case file review [of children who were subject to a Parental Responsibilities Order or for whom the local authority had registered an intent to apply for such an order] (25 in total).
- 4) Semi-structured interviews with looked after children who were subject to a Parental Responsibilities Order or for whom the local authority had registered an intent to apply for such an order (11 in total).
- 5) Semi-structured interviews with key decision-makers (as identified by the children - 6 in total) and other key informants/experts (3 in total) identified throughout the study.

#### **Data Analysis**

Miles and Huberman (1994) suggest that qualitative analysis involves the systematic review of data to identify similar phrases, patterns, relationships, sequences and differences. From this, themes and pattern emerge from your data which can then be linked into formalised bodies of existing knowledge, either in the form of theory or other related studies. This process can be done either manually or by using one of many available qualitative software packages.

Phases one and four were analysed manually. Phase one, as outlined earlier in this chapter, involved an analysis of relevant pieces of child care legislation and policy. This review focused on those sections directly related to permanency planning for looked after children and it considered how

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these sections reflected the principles of children's participation and protection. Phase four involved the gathering of data from a sample of looked after children's (subject to permanency planning) files. As the discussion below will explain (Phase Four – Review of Children's Files), two specific reports (Form E's and minutes of adoption panel meetings) were reviewed for this phase. In particular, those sections which made reference to the child's views and wishes were recorded on a written schedule (Appendix E) and were later analysed. This analysis involved exploring how children's views were described and/or recorded in the aforementioned reports. For example, were they descriptive; were they verbatim comments from children or were interpretations of the children's views. Moreover, it was noted where comments were not made whereas in some files they were.

The interviews conducted in phases two, three and five were all audio-taped and fully transcribed. Once transcribed, they were transferred into the qualitative software package NUDDIST. This computer programme acts as an organiser and a storage case for a researcher's analytical process. There are advantages and disadvantages to using computer software packages. Advantages include: they provide an organised single storage system for data; they give quick and easy access to material without a more mechanical cut and paste techniques; they can handle large amounts of data quickly; they force detailed consideration of all the text on a line by line basis and they help in the development of consistent coding themes. Disadvantages include: it takes time and effort to become proficient in using them; there may be difficulties in changing (or a reluctance) in changing categories once they have been established and particular programmes may lead to a limited

way of doing things. NUDDIST proved helpful in this present study. It was useful in organising and storing a large amount data – allowing for efficient analysis of the data to take place.

#### *i) Phase one: policy and procedural review*

Phase one had two objectives. First, to identify international and Scottish legislation and any corresponding guidance that provides the current framework when planning for looked after children requiring permanent care away from their birth families. Second, to examine how the internal policy (ies) of the local authority, participating in the present study translates the overarching legal framework into internal policies and procedures. In this analysis, attention was given to what models of childhood informed both the national legislation and the local internal policies and how children's rights to protection and participation were reflected throughout them.

The United Nations Convention on the Rights of the Child [hereafter the UN Convention] and the following pieces of Scottish legislation were examined: the Children (Scotland) Act 1995 [hereafter the 1995 Act], the Adoption (Scotland) Act 1978 [hereafter the 1978 Act], the Age of Legal Capacity (Scotland) Act 1991 [hereafter the 1991 Act] and the Regulation of Care (Scotland) Act 2001. Additionally, Scotland's Children: The Children (Scotland) Act 1995 Regulations and Guidance, Volumes 1 to 4 (Scottish Office 1997) were also reviewed. Throughout this analysis, emphasis was placed on reviewing sections that relate to the provisions, mechanisms and procedures in respect of the permanency planning decision making processes for looked after children.



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The internal policy and procedural manual of the local authority in this present study was examined in detail. Emphasis was placed on reviewing those sections which directly relate to permanency planning procedures, options and decision making processes for looked after children, requiring long-term care away from their birth families. The following sections were considered in this analysis:

- Case Records
- Children Looked After by the Local Authority
- Childcare Reviews
- Assessment of Needs and Overall Care Plan
- Parental Responsibilities Orders
- Adoption Processes and Procedures
- Adoption and Permanent Substitute Family Placements
- Adoptive Placements and Fostering Placements intended to be permanent
- Permanency Policy for Social Work Department
- Adoption and Permanent Care Panel – areas of responsibility.

These particular sections were chosen because of their relevance in establishing the framework and internal processes followed to develop permanency plans for looked after children at the particular local authority in this present study. This was also an opportunity to consider how this local authority interpreted and translated the broader international and national legislation into internal policies and procedures.



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Although this present study did not focus on adoption as such, policies and procedures in relation to both adoption and other permanency options were considered during the first phase. The planning framework and processes through which all permanency decisions are taken at the local authority in this present study are the same (see Chapter Four [Legal Framework] for a discussion on legal permanency options for looked after children). Regulation 7 of the Adoption Agencies (Scotland) Regulation 1996 states that all adoption agencies are required to establish an adoption panel. Adoption agencies can be either approved adoption agencies or, as is the case in this present study, a local authority. Consequently, every local authority must have an adoption panel<sup>24</sup> and a fostering Panel. Within a local authority the membership of both the adoption and fostering panel can be the same, however, they are considered two different bodies when sitting and minutes of respective meetings reflects this. The local authority participating in this present study had four such panels and the same members consider cases for both adoption and other long-term, permanent care options for children. The work of these panels is guided by the same set of internal policies. The formal name is Adoption and Permanent Care Panels, although members from this local authority refer to them as just adoption panels.

#### *(ii) Phase two: Adoption and Permanent Care Panel Members (adoption panels)*

As the present study will illustrate, permanency planning is a process. There are several different forums in which decisions are taken towards a final outcome for each child. The analysis conducted in phase one (as described above) identified these forums. They include: case supervision, Looked After

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<sup>24</sup> The 1978 Act s.1, s.3, s.4, s.5 & s.9

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Children reviews [hereafter LAC reviews], Adoption and Permanent Care Panels, the Children's Hearings System and the Sheriff Court.

An integral stage of the local authority decision-making processes is the Adoption and Permanent Care Panel<sup>25</sup> [hereafter the adoption panel]. The adoption panel reviews cases in their entirety. They consider what work has been done with the family prior to the case being referred. Consideration of any relevant assessments, previous LAC reviews and any other recommendations made for meeting the child's best interest and permanency needs is included. The adoption panel makes the final internal 'recommendation' for a child in respect of his/her long-term plan. As such, adoption panels not only have a fundamental role in permanency planning, but by virtue of the case overviews they hear, they would also have considerable insight into children's participation throughout the entire decision making process.

Adoption panels have three primary functions. First, to consider whether or not a child should be registered for permanency, secondly to recommend any one of the following permanency options for a child: adoption, freeing for adoption, Parental Responsibilities Order, or Section 11 Orders, and to approve matches to long-term carers (either adoptive or foster) and thirdly, to approve matches between prospective long-term carers (adoptive or foster) and looked after children.

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<sup>25</sup> The local authority in the present study refers to the Adoption and Permanent Care Panel as the Adoption Panel

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The Adoption Agencies (Scotland) Regulations 1996 specify the membership<sup>26</sup> and duties<sup>27</sup> of Adoption and Permanent Care Panels (adoption panels at the local authority in this present study). They must have a minimum of six members and it is up to an agency's discretion whether or not there are more. Of these six members there must be a medical and legal advisor<sup>28</sup>. The composition of the remainder of the panel members is at the discretion of the agency (in this present study - the local authority). It is, however, recommended that the qualifications and experiences of the other members will *"enable it to discharge its functions effectively"* and that *"each member is competent to assess whether any recommendations in relation to children are likely to promote their welfare throughout their lives"* (The Scottish Office. 1997:19). The membership of the panel should reflect a range of knowledge and experience in its composition and should *"should enable different perspectives on the issue to be obtained"* (The Scottish Office. 1997:19). Furthermore, it is suggested that some members are external to the agency and that all members are not directly involved with the cases being heard.

The role of the adoption panel is to review all referred cases in systematic ways and to make an independent 'permanency' recommendation regarding the child to the adoption agency (in this case the local authority). The

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<sup>26</sup> The Adoption Agencies (Scotland) Regulations 1996. s.6 (Appointment of medical and legal advisors) & s.7 (Appointment, composition, qualifications etc. of adoption panels).

<sup>27</sup> The Adoption Agencies (Scotland) Regulations 1996. s.8 (Duties of adoption agencies in making arrangements for freeing for adoption), s.9 (Duties of adoption agencies in making arrangements for adoptions), & s. 10 (Duties of adoption agencies in assessing prospective adopters).

<sup>28</sup> The Adoption Agencies (Scotland) Regulations 1996. s. 6 (Appointment of medical and legal advisors).

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adoption agency is required to have a designated person who considers the recommendations of the adoption panels and either accepts it causing formal legal proceedings to commence or rejects it, in which case he/she must respond in writing to the panel explaining the disagreement<sup>29</sup>. Typically, this position is titled the Agency Decision Maker.

In my initial research proposal, I requested permission to observe a series of adoption panels (as noted earlier – Adoption and Permanent Care Panels in the local authority in this present study are referred to as ‘adoption panels’<sup>30</sup>). The aims of this proposed method was to observe how legislation, policies and procedures were translated into practice and secondly, to observe how children’s views and wishes were heard during a formal decision making process and what mechanisms were used to bring their views and wishes into the meeting. I also hoped to establish a clear understanding of the decision making processes prior to meeting with the children, which links into the aims of phase three of this present study<sup>31</sup>. The Research Officer denied this request, because by observing panels I would be privy to third party information about extended members of children’s families creating potential data protection implications. Consequently, alternative ways to explore the original objectives of phase two were developed. In place of the observations, I carried out semi-structured interviews with individual

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<sup>29</sup> The Adoption Agencies (Scotland) Regulations 1996. s. 12 (Adoption agency decisions and notifications)

<sup>30</sup> Where the text refers to ‘adoption panels’ it is referring to the ‘Adoption and Permanent Care Panel’ at the local authority in this present study.

<sup>31</sup> Phase III: Aim 2 – to establish from the child’s point of view what the process is which leads to a permanent plan, and Aim 3 – to establish from the child’s point of view, how that process took place.

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members of one of the four adoption panels<sup>32</sup>. The particular adoption panel was chosen for two reasons. First it was considered to be the most active one in the city and secondly, it tended to deal with a higher number of cases involving children within the age bracket of interest to this present study. My local authority contact also suggested that I interview the Director of Planning and the Agency Decision-Maker as 'expert informants' (reasons for which are described below). All six members of the Adoption Panel agreed to participate, as did the Agency Decision-Maker and the Director of Planning and Commissioning. In total, eight interviews with professionals were conducted in phase two of this present study.

Drawing on the literature review and the analysis that emerged from phase one, a detailed interview schedule was developed (Appendix B). The same schedule was used in interviews with: 1) all six members of the selected Adoption and Permanent Care Panel; 2) the Agency Decision-Maker; and 3) the Director of Planning and Commissioning. The interviews were all conducted using semi-structured methods allowing for the use of open-ended questions and free flowing discussions with the interviewees. As Marshall (1994) found, in utilising this method participants can address and raise issues that a researcher may not have originally considered and this proved to be the case in my interviews during this phase (II).

For overall consistency, I followed the same interview schedule (Appendix B) with each participant during this phase. The interviews were divided into

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<sup>32</sup> At the time of writing this PhD, the local authority had 4 Adoption and Permanent Care Panels (adoption panels). This composition was under active review and changes were anticipated.



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three sections. Section one involved the gathering of biographical information about the interviewee, which included: gender, professional training, years of experience, current position, role of the adoption panel, and finally years of experience of the members of the adoption panels (see tables 1-6 below for a breakdown of the participants of phase two). Section two was a sequence of questions regarding their views on the impact that international law, domestic legislation and internal policies (to the local authority) have on the permanency planning policies and practices at this local authority. Lastly, section three was focused on questions regarding their professional views based on their experiences on the participation of children in the permanency planning processes and on how the views and wishes of children were actually considered in the formal processes and decision making.

Prior to the interviews each member of the adoption panel was provided with a summary of this present study and before commencing the formal part of the interview, each participant was asked if they had questions about either the research or the interview. Additionally, each participant was asked at this time if they had taken the opportunity to review the research summary and if there were any questions regarding it or the study before the interview began. The interviews all took place in the participants' own offices. Each participant was asked to sign a written consent, which outlined the following: the study's commitment to anonymity and confidentiality throughout; consent to tape-record the interview and a summary of how the data would be recorded, stored and used.



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Tables 3.1 to 3.6 describe the make-up of the sample interviewed in phase two of this study.

**Table 3.1: Gender**

Male	3
Female	5

**Table 3.2: Professional Training**

Qualified Social Worker	6
Solicitor	1
Medical Doctor (Paediatrician)	1

**Table 3.3: Years of Work Experience**

\*data missing on one interviewee

(Work experience relates to years of experience in the participants particular profession as identified in Table 2)

Less than 15	-
15 – 20	2
20-25	-
25 – 30	2
More than 30	3

**Table 3.4: Current Position**

Senior Social Worker	3
Child Placement Consultant	1
Planning and Commissioning Manager	1
Service Manager	1

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Solicitor	1
Paediatrician	1

**Table 3.5: Role on the Adoption and Permanent Care Panel**

Chair	1
Panel Member	2
Outside Consultant	1
Medical Advisor	1
Legal Advisor	1
Agency Decision Maker	1
Planning and Commissioning Officer	1

**Table 3.6: Years of Experience on the Adoption and Permanent Care Panel**

Less than one year	1
1 – 5	1
5 – 10	4

Immediately following the interviews, I sent a letter to each participant thanking them for their time. Whilst also indicating how the study would proceed and when and how they could expect to hear feedback on its findings. This included my contact details should they have any further enquires or points of interest for the study. One participant contacted me following receipt of this letter, indicating that the interview had prompted him to consider more consciously how the views and wishes of children were actually considered in the formal process of the meeting at the sitting of his next adoption panel. He acknowledged that sometimes (as in the interviews for the present study) there is a tendency to reflect the ideal which

is not always a true reflection of what happens in actual practice. In other words, although ideally he would like to feel confident that the system does allow for the child's views to be heard, he admitted that in practice it is not always the case.

*iii) Phase three: Looked After Children in 'permanent care'*

Children's rights to both protection and participation are enshrined in the UN Convention and are reflected in Scottish law and policy. To some, this is a dichotomy. Can children effectively and meaningfully participate in a system that is set up to protect them, where adults have ultimate responsibility for decisions in respect of their welfare (Kilkelly 1999 and Thomas 2000)? The overarching aim of this study was to examine a specific area of social work practice, where this dichotomy presents itself, and also to explore how children themselves viewed their participation in the decision making processes regarding their permanency plans (in other words their long-term welfare). The following three objectives guided this phase of this present study:

- To identify, from the child's point of view, whom they consider was involved in deciding his/her permanent plan;
- To establish, from the child's point of view, the process (es) that lead to his/her permanent plans being established; and
- To identify from the child's point of view, what input they felt they had (and/or) wanted in the development of his/her permanent plan.

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There were three specific criteria for children's inclusion in the sample for phase three. The child was i) looked after and accommodated by the participating local authority<sup>33</sup>; ii) subject to a Parental Responsibilities Order or had been registered for permanence<sup>34</sup> and iii) between the ages of eight and twelve years when they were registered for permanency<sup>35</sup>.

The decision to focus exclusively on the experiences of this group and age bracket of children was influenced by findings of other notable studies. For example, Thomas and O'Kane (2000) identified how 'looked after' children are subject to more decisions than other children who are not living away from their birth families. As well, they clearly articulated how looked after children are more likely than their peers (not looked after) to have a number of adults involved in their day to day care including: social workers, managers, foster carers, psychologists and children's panels members etc (Thomas & O'Kane 2000 and Thomas 2000). Consequently, large numbers of professionals are involved in making decisions for looked after children and as such, critical questions should be asked about how and where the 'looked after' child's voice is heard when these vital life changing decisions are being

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<sup>33</sup> The definition of a 'looked after' child is in Section 17(5) of the 1995 Act. The list is: children accommodated under Section 25; children who are subject to a supervision requirement – section 70; children who the subject of orders, authorisations or warrantees issued by the Sheriff or a children's hearing in terms of chapters 2 and 3 of the Part II of the 1995 Act, including a Child Protection Orders and a child away from home on a Child Assessment Order; children who are the subject of a PRO (section 86); and children who the subject of orders made when they are transferred to Scotland from other parts of the United Kingdom having been the subject of a care order, etc (section 33).

<sup>34</sup> A looked after child is 'registered for permanence' once an adoption panel recommends either adoption or long-term foster care for that child and the agency decision maker agrees with the proposed plan.

<sup>35</sup> Permanency for children is defined in the local authority policy as "achieving a continuity of care with nurturing parents or carers who will meet the child's care and emotional needs throughout the years they are growing up, into early adulthood and hopefully beyond.

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made. Moreover, Munro (2001) conducted a study that considered the degree of power and influence a sample of fifteen looked after children (aged 10 – 17 years) who had been in care at least 2 years, felt they had in decision-making. She found that looked after children felt that they were able to influence trivial decisions about themselves, but that professionals would not let them get involved in the big issues that really mattered to them (e.g. contact with family).

The criterion of age was selected for particular reasons. First, there is recognition in the literature that pre-adolescent children have been largely ignored in research studies (Hill et al 1996; Marshall 1997; Schofield & Thoburn 1996 and Shemmings 2000). Secondly, previous studies have suggested that the most variance around children's participation in decision-making occurs in middle childhood and that there is considerable uncertainty as how to meaningfully include children in this age range in decision-making (Thomas 1995; Thomas & O'Kane 2000; and Munro 2001). There is a presumption in Scots Law that children over the age of twelve are of sufficient maturity and understanding to have their views and wishes taken into consideration when particular decisions are being made that affect their lives<sup>36</sup>. It is important to note that this is only a presumption, and as such it does not exclude children who are under the age of twelve also having their views duly considered. However, critical questions have been raised as to whether proper consideration is actually given to the views, wishes and feelings of children under the age of twelve years, particularly in social work and legal proceedings, such as the one being examined in this

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<sup>36</sup> The Children (Scotland) Act 1995, sections 6 (1), 11(7), 16(2), 17(3), and 95

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study (Marshall 1997; Tisdall 1997; Thomas & O'Kane 1998; and Shemmings 2000). A recent report by Tisdall et al (2002) *Voice of the Child' under the Children (Scotland) Act 1995: Volume 1* furthered this argument by identifying the continuing confusion and ambiguity as this age 'presumption' is interpreted in practice.

Guided by the theoretical framework of James and Prout's 1990 model, face-to-face interviews with children were selected as the primary method of data collection for this phase. Given the sensitive and personal nature of this study, individual semi-structured interviews versus other methods such as focus groups were considered the most appropriate method. Furthermore, individual interviews have been shown to be effective for collecting qualitative data from children (Christensen et al 2000). Similar to the interviews conducted in phase two, this method allowed me to use a series of open-ended questions and to follow up any particular themes that the children identified outside of those, which I had planned to address.

The interview schedule (Appendix D) for the children's interviews was developed around the following five key areas:

- i) Who do the children identify as being the key adults in their lives?
- ii) How do the children understand their rights in relation to decision-making?
- iii) Who do the children see as being the key decision-makers in their lives?



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- iv) Where and how do the children locate themselves in general decision making about their lives?
- v) Where and how do children locate themselves and other key person's in the decision making process around their permanent plan?

The interview schedule was divided into six sections and these were:

- i) Introductions;
- ii) Getting to know you;
- iii) Specific decisions;
- iv) Your permanent decision;
- v) Arising issues; and
- vi) Conclusion

The use of participatory techniques in research involving children has been promoted for its *"qualitative exploratory power in providing depth, richness, and realism of information and analysis"* (Chambers 1994:14). Participatory methods encourage researchers to use creative means of communicating with children in a way that builds upon a child's abilities and capabilities. Furthermore, they recognise children's roles as 'social actors' shaping their own worlds (Christensen 2000). For example, the use of art and crafts, games and more visual activities has proven very successful in achieving this in other studies involving children (Christensen et al 2000). Additionally,

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these techniques allow researchers to consider the individual characteristics of children from different ages, abilities and literacy levels, whilst keeping a similar interview schedule and framework to guide all the interviews.

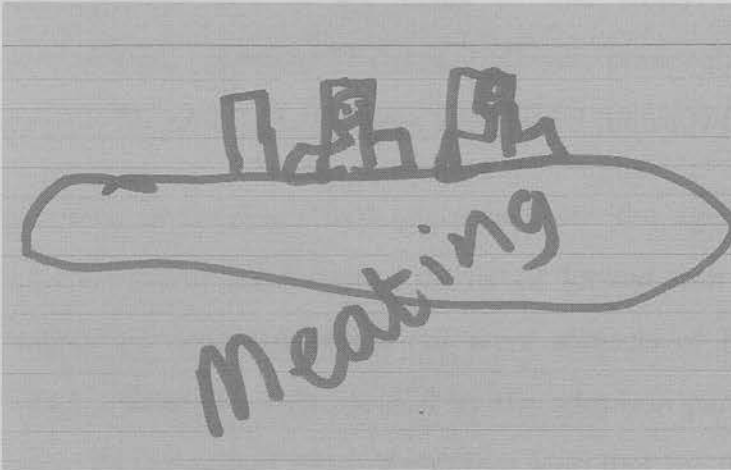
For my interviews with the children, I designed methods that would encourage children to participate in meaningful and creative ways. For example, for each interview I had a 'kit' of markers, crayons, paper and small cards and the children were encouraged to draw their responses in place of or to complement what they were telling me verbally. Moreover, I also encouraged the children to make choices of how the questions proceeded. For example, for the warm up exercise, I had three cards each with 'decisions' (where I go to school, what clothes I wear and what music I listen to). The child was given the choice to select which one was discussed first and/or to change the decision all together and to come up with one of his/her own. This was done for two reasons, first to 'warm up' before moving onto more sensitive areas and secondly to establish a shared understanding of what a 'decision' was.

When the children were asked to begin identifying the 'key people' in their lives, they were encouraged to write down the names, draw pictures of the people or ask me to write the names (on cards). Once we established the 'key people' in their lives (including themselves), the cards were laid out before us. As I asked further questions about their lives and important decisions, I asked the children to point to the card (s), which represented whom they thought was involved in making any given decision. These cards were a useful springboard for probing further about how these people were involved in their lives and to what extent. The children clearly enjoyed this

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process and many chose to draw very creative pictures of the 'key people' in their lives, as described by them. Moreover, the children also used the cards to draw pictures telling me about other aspects of their lives. For example, one child described how decisions are made at meetings and then drew a creative picture of what 'meetings' are like.

**Figure 1: A child's drawing of a meeting where decisions are made**



Each interview took between 45 minutes and 1 hour in total. The child's foster carer and I negotiated the time and venue for the interviews to take place. Each foster carer requested that the interview take place in the child's foster home, where a quiet area was provided. In two cases, the foster carer asked to be present during the interviews and this was accommodated. One of the children in the sample lived in a residential home and in this case, I went to the home and was able to negotiate with staff a quiet location for the interview. All the interviews were tape-recorded and later fully transcribed.

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### Access

As other similar studies have found, conducting research with looked after children is not straightforward and doing so can present the researcher with particular challenges (Heptinstall 2000 and Thomas & O'Kane 2001). Establishing and making contact with the specific group of looked after for the present study was both time consuming and challenging. However, their participation was at the heart of this study. Consequently, careful preparation, attention to detail, patience, perseverance and creativity was required to ensure their voices were heard centrally throughout.

A series of meetings took place between the agency contact and myself, where together we reviewed the list of 'looked after children' who had been 'registered for permanency' or were subjects of Parental Responsibilities Orders, from one area covered by the adoption panel interviewed in phase two. We identified a list of children who met the three key criteria for this present study (looked after, registered for permanence [or subject of PRO] and between the ages of eight and twelve years). At this stage, some children (who met the criteria) were excluded, as my agency contact indicated their participation was not appropriate given her personal knowledge of their current instability and circumstances. Although the sampling for the present study was random within the three criteria, there was a selection process outwith my control. At this stage, looked after children considered 'too vulnerable' to participate in a research process were excluded. Reasons for this vulnerability included: significant mental health concerns and/or extreme instability in either placement or circumstances. Consequently, general findings of the present study represent the

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experiences of those looked after children considered by the adults as able to participate and of those children who agreed to participate in the research process.

In the first instance, a list of ten children was identified; six females and four males, ranging in age from eight to twelve years old<sup>37</sup>. Of this group, only one child was actually interviewed in the final sample. For three of these children, I was denied access by the child's social worker. In two of these cases, I met with the social workers in person and discussed the study in greater detail, to allow them to pursue queries about the child's potential participation. One social worker described the child as *"very anxious"*, particularly in respect of his permanent plan. Another social worker described the child as *"very unstable at present"*. In the third case, I spoke with the social worker on the phone and the child was described as having a *"tremendous degree of anxiety about the length of time the process [permanency] has taken"* and an interview such as the one proposed in this present study might cause more anxiety. Notably, this child was also described as 'very articulate' and 'very aware' of the case plan. Consequently, none of these above mentioned children were personally given any details about the study and their social workers made the decision that they could not participate in this present study, based on their current situations and the potential upset to their well-being that this study might induce<sup>38</sup>.

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<sup>38</sup> The issues of conducting research with looked after children and the particular ethics is examined further in Chapter Two: Methodology.

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Of the seven remaining children, a phone call discussion with each of their social workers resulted in their agreeing the child participating. In these instances, the social worker was sent an information pack (Appendix C) to give to the child (described in the forthcoming section on informed consent). This allowed the children to decide themselves whether or not to participate in this present study. Six of the seven possible children said no at this stage. Perhaps notably here, there were two sibling groups, one of four and the other of two. In the case of the four sibling group, they all stated that they did not want to participate because they did not want to *"repeat their stories again"*. In the other sibling group, no specific reason was given. In these instances, I had little control over how information about the study was put across to the children, and could not really assess what factors might have influenced their decisions other than how I explained myself and the study in the information packs. One child of this original group agreed to participate. However; the interview did not take place for several months and was rescheduled several times due to changes in the child's placements and other issues of instability in the case. This is significant as it reminds us of the inherent difficulties and particular sensitivities that one must consider in conducting research with looked after children.

In my original proposal, alternative plans were considered should I encounter difficulties in establishing a viable sample size. The first alternative plan was to request interviews with looked after children over the age of twelve who were registered for permanency. As one of the key features of this study was to focus on children under the age of twelve years, the decision to approach children over twelve years was qualified with the



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condition that they were 'registered for permanence'<sup>39</sup> when they were under twelve years of age. All of the interviews for this study were asking children to consider retrospectively how they viewed their participation in their permanent plans. For those children over the age of twelve, it was possible that the plan was established many years previously and their recall of it may differ from that of a child who has just been through the process. Ultimately, one young person of sixteen was interviewed and in this case, his permanent plan was established when he was younger than twelve years. For this particular interview, it was important to modify the interview methods and some of the questions, as it was unlikely that drawing was going to be the most suitable means of communicating with a sixteen year old. Moreover, I was asking him recall events from when he was much younger and as such, setting the context for this was important.

If this strategy (interviewing children over the age of twelve) proved unsuccessful in increasing the size of the children's sample, my proposal had also considered the possibility of approaching another local authority. However, this was not a preferred option, as this present study was intended to be a deliberate, in-depth exploration of practice and experience in one local authority. This alternative did not prove necessary in the end.

When it became clear that I needed to increase the sample size, I met with my agency contact again and discussed expanding the age criteria and requested that suitable children from other permanence lists (from one of the other

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<sup>39</sup> A child is 'registered for permanence' when an Adoption panel has recommended a permanency plan (adoption or long-term foster care) and the Agency Decision Maker has agreed to this recommendation, but the local authority is yet to secure legal permanency through the court.

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three adoptions panels at the local authority in this present study) be considered for inclusion in the sample. This process lead to a further twenty-one children (all these children were under the age of twelve, except one sixteen year old) being identified and of these, ten children were interviewed for the final sample. As with the first list, I contacted each child's social worker to discuss the study and the potential participation. Seven children were not given the information pack as their social worker felt their participation was not appropriate. In respect of three of these children, their social workers felt that too much was currently going on and that this study would be an additional and unnecessary stress. Interestingly, one of these social workers questioned generally the participation of looked after children in research. She stated that they (the local authority) are trying to 'normalise' children's lives, yet looked after children in particular are continuously subjected to interviews. Consequently, participating in a study such as this one would be a further and perhaps unnecessary intrusion. This is certainly an interesting ethical dilemma that is touched on again in the conclusion of the present study. Another social worker indicated that the child 'hates' social workers because they ask too many questions and that she is just new to his case. She was in the process of trying to establish a relationship with him; consequently, she felt that his participation would not be suitable. In regards to the remaining three (a sibling group), their social worker initially indicated yes, but subsequently retracted, citing developments in their case that resulted in considerable disruption for these children. As such, participating in this study was no longer thought to be appropriate.

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After a long process of careful and sensitive negotiation, eleven looked after children (2 were subjects of parental responsibilities orders and the remaining 9 were registered for permanence) were interviewed for the present study (a breakdown of the children's profiles can be in Chapter Six [Children's Voices]).

#### *v) Phase Four: File Review*

As discussed in the previous section, one of the most significant challenges for me during this present study was securing a viable sample size of children to interview. Already well into this study's timetable, it became evident that I might not be able to rely on just face-to-face interviews with children to ensure that their voices and experiences were, in some way, reflected in my findings. As such, I considered other sources from which valid data could be also obtained. This led to this new phase being developed. In this phase a documentary analysis of specific sections of children's case files took place and it was designed to complement data gathered from the interviews with children.

Prior to accessing the children's files and as part of gaining consent to do this, two critical issues needed to be addressed: data protection and consent. In Scotland, the Data Protection Act 1998 came into force on 1 March 2000, with a transitional period for full compliance by the end of October 2001. Neither the University nor the Local Authority had an updated policy regarding data protection in relation to gathering data for the purposes of research. According to the Research Officer at the Local Authority, they were awaiting guidance on the most recent amendments to the Data Protection Act, prior to updating their policy manuals on this matter. If I

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were to access children's files, I would have access to considerable amounts of personal data about the child and extended members of their network. Issues regarding data protection and consent still needed to be addressed before phase five of this present study could ethically proceed.

In considering current legislation, I reviewed paragraph 9 of the Statutory Instrument 2000 no 417 – The Data Protection (Processing of Sensitive Personal) Order 2000 which makes provision for records containing sensitive personal data to be disclosed for research purposes. Here it states that records can be accessed for the purposes of research providing the following two criteria are met:

1. The disclosure does not support measures or decisions with respect to any particular data subject.
2. The disclosure does not cause, nor is likely to cause, substantial damage or substantial distress to the data subject or any other person.

Health Services Data Protection Policy from one particular area in Scotland offers useful guidance on this particular issue. It states that when researchers make application to access records they must provide a letter explaining the purpose of the research and they must demonstrate that the above criteria are met. If access is granted the researcher must sign an undertaking that they will not disclose to any parties information which they have learned from the records, or publish any personal identifiers.

Permission had already been given by the local authority for the research. However, gathering data from files was not in the original proposal and as

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such a further meeting was scheduled between my contact manager, the research officer and myself to discuss this change and my proposal (which had been submitted in writing prior to this meeting). At the meeting, both data protection and consent issues were addressed and resolved. On data protection it was concluded that: the aims of this research were consistent with Section 33 of the Data Protection Act 1998 (which relates to paragraph 9 of the Statutory Instrument 2000 no 417 – The Data Protection (Processing of Sensitive Personal Data) Order 2000). The Research Officer, in the written account of this meeting stated *“given that the aim of this study is to contribute to our understanding of how best to assist younger children at a difficult time, and that she (this researcher) has clearly demonstrated sound understanding and management of ethical considerations (data anonymity and client confidentiality etc.), it was agreed that: her approach was not inconsistent with the tenets of section 33”*. On the issue of consent it was concluded that *“(the) consent issue is straightforward because nearly all the children (in reference to looked after children under aged 16 years) concerned are the responsibility of the department”*. None of the files that I would be accessing would be those of young people sixteen years and over and as such, the local authority can give such consent; which was given at this aforementioned meeting.

The interviews with the children developed a picture of experiences and understandings of how permanent decisions were made and what role themselves and others (as identified by them) played in the process and critically this was from their point of view. Shaw and Gould (2001) describe documentary evidence as a rich source of material. However, they caution that data in files will be reflective of factors such as: the particular writing



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style of the social worker, what questions the social worker asked the child, what is their relationship with the child (did they just meet, has this allocated worker been with the child for many years), what did the child choose to tell the social worker and what did the social worker choose to document. Therefore, a file review would allow me some insight into how children's views and wishes were reflected in case records, but it would only be reflection of (in most cases)<sup>40</sup>, of the social worker's account of the child's views.

Given the above rationale, I developed a short proposal for the local authority which touched on the data protection issues and laid out what data would be gathered from the children's files. Only two documents in the child's files would be reviewed and they were: 1. Form E's<sup>41</sup> and 2. Minutes of adoption panel meetings. Three factors influenced this decision. First, for each case that comes before an adoption panel, the allocated social worker completes a Form E. The Form E was developed by the British Association for Adoption and Fostering [hereafter referred to as BAAF] in 1996 and it is used by most local authorities across Scotland. It is a standardised form used for the collection and presentation of data about children needing permanent foster or adoptive family placements (BAAF 1996). The completed Form E is circulated to members of the adoption panel prior to meetings for their review and it then forms the basis for the discussion in meeting. As such, it also made sense to review the minutes of the meeting that were held in

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<sup>40</sup> It is possible for the children to submit written material on their views, should they choose to. In this instance, I would have access to material written by the child themselves.

<sup>41</sup> Form Es are documents developed by the British Association of Adoption and Fostering [BAAF], which are used in Scottish Local Authorities in when cases are being registered for permanence (see p. 179 for a fuller explanation of Form Es).



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respect of the Form E's that were reviewed. The accompanying guidance notes from BAAF describe the Form E as serving a different purpose to the Looking After Children<sup>42</sup> forms. Unlike the yearly review format of the looked after children review forms, a Form E *"brings together the child's history as well as their current situation into one document, including his/her wishes and feelings, into one document"* (BAAF 1996:1).

The second reason behind the decision to review the Form E's was influenced by comments made by some of the participants in phase one, such as: *"you look at the new standards that are out, it says very clearly that children should be involved in the process of planning for their future as much as possible depending on their age and stage and that to me would imply that the information presented to the panel, particularly Form E's, should include the views of the children, you should have some indication of the views of the child"*.

Another interviewee responded when asked how the children's views are brought to the panel "I think it comes through in the paperwork, in the Form E's that the social worker completes and we read the night before the panel. So usually it is a paragraph or a page or two on the child's opinion" and other stated "so how do we get that sense, it's probably from the foster parent, the social work report (Form E), how you get the sense of where the child is at and involved in the process." Also notable, another interviewee said that there is a section on the Form E for the child to sign and that they have never seen this filled in.

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<sup>42</sup> Looking After Children forms are a standardised recording system used for children who are looked after for the purposes of case review and planning.

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Lastly, accessing these two particular records was not only relevant but practical and easily available. My main contact with the local authority was based with the Resource team. This team manages and supports the foster care system as well as the adoption panel system. On site, they have all the smaller files<sup>43</sup> on all looked after children who have been registered for permanence. This would include records of any Form E's and minutes of any Adoption and Permanent Care Panel Meetings that had been completed or taken place. Therefore, this would allow centralised access to the files in an office where people had become familiar with me and would be least disruptive, while still allowing me access to data that enriched the present study.

In the Form E there are clear and distinct places throughout it where the allocated social worker is requested to comment on the child's wishes and views in respect of the plan that is being proposed for consideration at the panel. I developed a schedule for collecting data from these forms directly, which relates to the sections regarding children's views and wishes, in the Form E (Appendix E).

#### ***iv) Phase Five: Key Decision Makers***

During the interviews with the children in phase three, they were asked to identify those individuals whom they saw as being 'decision-makers' in their lives. Following this, a series of 'decisions' were put to the children and they were asked to identify who was part of making those 'decisions'. This included the permanent decision that they would no longer live with their

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<sup>43</sup> The allocated Social Worker would have a more extensive file on the child and this would be kept in their office. There are several different social work offices in this local authority.

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birth families. This present study was chiefly designed to explore children's participation (in the development of their permanency plans) from their perspective. In keeping with this, phase five involved interviewing those 'decision makers' that the children identified as being involved in the decision that they would no longer live with their birth families. This method is known as 'web design', whereby the participants themselves identify who the researcher should be interviewing rather than the researcher defining and/or selecting the participants (Tisdall et al 2002). Interestingly, all but one child identified their current allocated social worker as the only 'decision maker' responsible for the decision that they would no longer leave with their birth families. One child identified a former key worker from a residential care setting as well as her current allocated social worker.

Consequently, the allocated social workers were approached about participating in an interview for this present study (the research officer was previously aware of this and had given permission). They were each provided with the same materials given to the professionals interviewed during phase two and they were given the personal option of participating or not. Seven social workers agreed to participate in this present study. There were three groups of siblings - one of three children and the other of two and as such some children shared the same social workers. In these cases, the children shared the same social workers (three in total). All the social workers interviewed in this phase had been professionally trained in social work. Table 3.7 (below) displays a break-down of the social workers' years of experience in child and family social work.

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**Table 3.7 Years of experience of social workers interviewed during phase five**

<b>Years of Experience</b>	<b>Number of Social Workers</b>
Less than 2 years	2
3 – 6 years	2
7-10 years	2
11-14 years	1
More than 15 years	2*

\* the two social workers with over 15 years experience were the Children's Rights Officer and the Resources Development Manager. Their inclusion in phase five is explained below.

In addition to the key decision makers, two social work trained professionals from the local authority were interviewed as 'expert informants'. First, the Children's Rights Officer was interviewed. This post was identified by many of the social workers as being an important mechanism through which children's voices and views are heard in complex processes, such as permanency planning. As well, this particular post has responsibility for seeing each child in the local authority that is subject to a Parental Responsibilities Order on an annual basis. It is interesting to note that none of the children in the sample identified the children's rights officer - rather it was their social worker. Secondly, I interviewed my contact person from throughout the study. In addition to the considerable amount of time spent in organising access, she also agreed to be interviewed. Where necessary the

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questions were modified to suit the experience and expertise of these two participants.

Semi-structured interviews were used and they took place in the social worker's office. Each interview took between 45 minutes and 1 hour. The interview schedule for this series of interviews was generated from two sources. First, the interview schedule from phase two and secondly, the key themes which emerged in the interviews with the children in phase three (Appendix F).

#### ***Ethical Considerations***

In any research that involves human subjects, careful consideration of ethical issues is fundamentally important throughout the course of the present study. This is particularly true when vulnerable groups - such as children - are being asked to participate (Morrow & Richards 1996; Hood et al 1996; Christenson 2000). To assist in defining the ethical framework for this study, I followed the guidelines set out in the *Code of Practice for Research Involving Children* from the Centre for the Child and Society at the University of Glasgow. This Code incorporates standard ethical practices used in social research, with special considerations given to working with children; as such it was particularly useful and relevant to the present study. The code outlines a series of areas that a researcher should consider throughout the course of their study and these are: aims of the research; informed consent; confidentiality and anonymity; equal opportunities; recording; staff or students carrying out research; children's safety; anxiety and distress; debriefing and feedback; financial issues; and researcher safety. Each of these was considered and informed the design and conduct of the present

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study. What follows is a fuller discussion of the key areas of child protection, informed consent, confidentiality and anonymity and children's safety and how they were considered throughout the present study. Where particular considerations are also relevant to adult participants, this is noted.

#### *i) Child Protection*

Individuals who work directly with children are required to provide their employer with a criminal record check, which includes both, spent and unspent convictions<sup>44</sup>. This is also an expectation, which is reasonably placed upon researchers. I have had a criminal record check completed since coming to Scotland for purposes other than this present study, and made it available to the local authority prior to any contact with children.

In keeping with responsible research practices and the child protection policy of the local authority, should any children indicate to me during any stage of this present study that they or another young person around them was being harmed or were at risk of some harm, then this information would have to be reported to the appropriate manager. For the purposes of this present study, it would have been my agency contact (unless the allegation concerned this person). All of the children were advised of this prior to the interviews, but they were assured any such information would not be shared without their prior knowledge.

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<sup>44</sup> In Scotland, there has been a series of changes to this system and three levels of criminal record checks are now available through Disclosure Scotland. This came into force as of April 2002.



### ii) *Informed Consent*

The process of ensuring children's informed consent was extensive and it involved moving through a series of layers, prior to actually establishing face to face contact with the children. A practical implication for this study was the length of time this process took. Steps included: selecting a potential list (s) of looked after children (as described above), letters to the social workers, establishing telephone contact with the social workers (and in some cases face to face meetings), information packs being given to children, scheduling the interviews and then actually carrying them out. This entire process spanned over a twenty month period. But despite this extensive length, its meticulous and sensitive completion was an essential component of this present study.

To help children make informed decisions about whether or not they want to participate in research, it was critical to communicate information to them about the study in a way that was both accessible and understandable (Alderson 1995; Thomas & Beckford 1999 and Christensen & James 2000). In considering how best to do this, I consulted other notable studies that had developed creative information 'packs' for children. These packs are used to assist in ensuring children's informed consent. In particular, Thomas and Beckford, in their 1999 study *Adopted Children Speaking* developed a particularly creative and effective model. I developed a similar 'information pack' for use in this present study. It included the following information for children:

- Who I was;
- Where I worked;

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- Why I wanted to speak to them;
- What I wanted to talk to them about;
- Answers to possible questions they might have;
- How many times I would meet them and for how long;
- What would happen to the information they gave me;
- How I would ensure their safety; and
- How they could contact me if they had further questions before deciding.

(See Appendix C for full Information Pack)

The information packs were written simple language and printed on coloured paper. Additionally, prior to using these packs they were shown to other young children in my personal circle to ensure they were 'child-friendly'. This 'pilot' resulted in some changes being made to the originals, particularly in putting my Canadian words into a more Scottish dialect. The information packs were introduced by a personalised letter addressed directly to the child from me.

In most cases, the interview pack was reviewed with the child by their foster carers. Within a few weeks of sending the children the packs, I contacted the social workers and if the child had agreed to participate in an interview, then their contact details were provided to me. I was given the carer's numbers and called them directly to set up the interviews with the children. Prior to each interview actually starting, the child was asked if they had seen the 'information pack, did they have questions about it, are they in agreement to taking part and had they signed to consent. In two cases, the child had not seen the pack as it had not been given to them (according to the child). In

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these two cases, time was taken to go over it before the interview. On the whole, the information packs were a useful tool, as in the majority of cases they gave the child a sufficient understanding of the study and of me prior to actual interviews.

The informed consent of both the adults and children was seen as an ongoing process throughout the study. At any time, a participant could withdraw.

#### *iii) Anonymity and Confidentiality*

All participants in this study (adult and children) were ensured that their anonymity would be protected. In any recordings and presentations of data, pseudonyms are used. Where direct quotes are used, pseudonyms were interchanged to ensure that readers are not able to connect certain quotes to one individual. Participants were advised that basic biographical information about them would be gathered, but again will be presented in such a way that does not connect them. This information, along with interview transcripts was stored in a locked and secure place throughout the duration of the study.

When conducting research with any person, both adults and children alike, it is important to be clear that complete confidentiality cannot be guaranteed. In relation to adult participants, confidentiality can be more assured, as researchers are not subject to the same guidelines as with children. However, when explaining confidentiality to the children, I was explicit in saying that should information be revealed regarding an immediate threat to their wellbeing or those around them, I would pass this on to someone who could

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help them. They were advised that this would not be done without their knowledge and that it would be discussed with them first.

There was also a unique issue in relation to confidentiality in this study. During phase five, I met with the children's social worker and in most cases they had an interest in learning what the child had told me. Here, I needed to be clear about my role as a researcher (not social worker) and the need to respect the research process around confidentiality. Admittedly, this was challenging at times, as I am a researcher who had formally been in practice and was used to consulting with colleagues about cases. As well, the social worker's interest was genuine as they wanted to have an 'outsider' give them a sense of how the children understood and described their experiences and their permanency plan. Certainly, the children were told that they were able to talk about the interviews with others, but that what they told me (other than child protection issues) would not be passed on.

#### *iv) Children's Emotional Safety*

The code from the University of Glasgow suggests that a researcher consider the following questions before conducting a study that involves children: i) are your methods consistent with the child's well-being; and ii) what potential harm might your study have upon a child by their participation? Given this present study is concerned with the lives of looked after children, it is likely that some of the participants will have experienced disruptive pasts. Many will have been exposed to child abuse, family violence and other difficult familial situations. Furthermore, discussion of a child's long-term plan away from their birth families had the potential to open emotional boxes for the children. Consequently, careful consideration of how the

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questions were composed and asked was important, to ensure that children were protected as much as possible from any harmful consequences of taking part. Where it was recommended by adults who knew a child (who was maybe earlier identified as meeting the criteria for this present study) that the child's situation was particularly unstable and/or insecure, they were not approached about participating despite fitting the criteria for the study. Although, one might suggest this impacts on the findings (i.e. the finding reflects only the experiences of the more secure and stable children), this did seem appropriate and is consistent with the ethical standard for this study. Prior to meeting the children, I spoke with their social workers and in some instances their carers. During these conversations, I was able to establish if there was anything in particular about the child that I should be aware of in order to protect their well-being throughout the interview. For example, one child had recently experienced a change in placement that was particularly traumatic. Although I was not discouraged from questioning this, I was forewarned that there was a distinct possibility the child would be unlikely to discuss it and indeed, this was the case.

During the interviews with the children, they were reminded that they did not need to answer any questions that they did not want to. To support this decision, they were given a red card and if they did not feel comfortable with the question they could just hold up the red card. Some of the children made use of this tool. When the interviews were coming to a close, it was treated as a gradual process and it did not end abruptly. The tape recorder was turned off and I spent more time with each child and 'checked in' with them to make sure they were okay. In most cases, the child requested to hear some



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of the tape which provided an opportunity for some relaxed fun. Each child was asked if they had people that they could talk to if there was anything that came up in the interview that they wanted to talk about further after I had left. Additionally, I ensured that my role with the children was made clear from the start. I was acutely aware of one of the issues in working with looked after children where a number of adults come in and out of their lives. My short-term, time limited and 'researcher' role was made very clear both in the information packs provided and when I met the children face to face.

### Conclusion

This chapter outlined how the present study was designed and conducted in both thoughtful and deliberate ways to ensure that the direct experiences of looked after children were heard. Furthermore, it outlined how the wider context (e.g. legal and policy framework) would be considered in the present study according to those professionals working in the system. In doing so, the chapter highlighted some of the methodological sensitivities of conducting research with looked after children. Significantly, in any research involving human subjects (particularly children and/or vulnerable adults) ethical considerations require considerable attention not only in the design of the study, but also in the ways in which it is carried out. This chapter demonstrated the ways in which the present study was attentive to ethical considerations throughout. Moreover, it highlighted the particular challenges of conducting research with looked after children. As the chapter discussed, gaining access to a sample of looked after children was not straight forward and involved a series of meetings with adults before it was



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possible even approach the children about their interest in participating in the present study. However, their voices were a fundamental part of the present study. It is essential that researchers continue to find sensitive and creative ways to hear the voices of looked after children to ensure their participation in policies and practice develop that impacts their lives.

children in Scotland who are unable to grow up within their birth family networks. Second, it considers the assumptions that underlie the approach(es) taken to ensure child care provision, which guides and shapes permanency planning policies and practices in Scotland.

This chapter will focus on key sections of international law and Scottish legislation that have particular relevance to how permanent decisions are made for looked after children, growing up away from their birth families. The various legal pathways available to local authorities responsible for permanently planning for children outside their birth families are defined, as well as the legal requirements and principles which shape how decisions about children's long care are defined in present day law. Chapter Five (Regulation into Policy and Practice) closely examines how relevant legislation reviewed here is then translated into the permanency planning policy for the local authority involved in this present study.

#### International law

On an international level, Scottish child care law and practice is principally judged by the European Convention on Human Rights (hereafter referred to as ECHR) and the United Nations Convention on the Rights of the Child

\*Permanency planning refers to a process undertaken by a local authority to secure a child's long-term plan.

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### **Legal Framework**

#### **Introduction**

The forthcoming analysis fulfils two key purposes. First, it establishes a broad understanding of the legal framework that shapes planning for children in Scotland who are unable to grow up within their birth family networks. Second, it considers the assumptions that underlie the approach(es) taken in current child care legislation, which guides and shapes permanency planning policies and practices in Scotland.

This chapter will focus on key sections of International Law and Scottish legislation that have particular relevance to how permanent<sup>45</sup> decisions are made for looked after children, growing up away from their birth families. The various legal pathways available to local authorities responsible for permanency planning for children outside their birth families are defined, as well as the legal requirements and principles which shape how decisions about children's long care are defined in present day law. Chapter Five (Legislation into Policy and Practice) closely examines how relevant legislation reviewed here is then translated into the permanency planning policy for the local authority involved in this present study.

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[hereafter referred to as the UN Convention] (Cleland & Sutherland 2001). Although both are important considerations in the context of child care law, it is important to note that greater accountability and enforcement is provided for from the ECHR. Unlike the UN Convention, the ECHR is enforceable in the United Kingdom by domestic law through the Human Rights Act of 1998, which came into force on 1 October 2000. The ECHR ensures the civil and political rights of all 'citizens of Europe', including those of children. The ECHR is divided into three sections: I – Rights and Freedoms; II European Court of Human Rights, and III Miscellaneous Provisions. Public authorities such as local authorities cannot act in ways which are incompatible with rights guaranteed under the ECHR<sup>46</sup>.

The benefits of the ECHR for children has been criticised from children's organisations and advocates, as it is not considered to be a document written from a child-focused perspective (Cleland & Sutherland 2001). Furthermore, it makes no specific provision against discrimination based on age. Legitimate questions have been raised about its applicability to the lives of children and young people, however as Kilkelly (1999) points out, despite a lack of child-specific standards in the ECHR, the UN Convention can and is used for "guidance" to fill gaps as well as clarifying any ambiguities when referencing the ECHR (p.15)

The Council of Europe's principal document in the area of children's rights is the European Convention on the Exercise of Children's Rights of 1996. This particular convention entered into force in July 2000, but it not yet signed by the United Kingdom. It is confined to procedural rights in judicial

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<sup>46</sup> 1998 Act, s. 6.

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proceeding (i.e. the right to be informed, to express views, to have these views given due weight and for the appointment of a representative where the child's interest conflicts with those of the parents) and it is intended to supplement the UN Convention (see below).

The UN Convention was specifically designed to promote, protect and provide for the rights of all children<sup>47</sup>. The UN Convention speaks to a much broader range of rights for children and young people than does either the ECHR or indeed the European Convention on the Exercise of Children's Rights (Hill & Tisdall, 1997). By signing and then ratifying the UN Convention, States, commit themselves to bringing their domestic laws, policies and practice in line with each of its Articles. The UN Convention is made up of fifty-four Articles concerning the civil, economic, social and cultural rights of children and young people. The Convention applies to all children (in States who are parties to the UN Convention<sup>48</sup>) under eighteen years of age except in States where the age of majority is achieved before eighteen years<sup>49</sup>.

The UN Convention is based on the premise that not only do all children have equal social value to adults, but also that they require special care and protection. Unlike the ECHR, the UN Convention speaks directly to the needs, rights and responsibilities of children and young people (Cleland &

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<sup>47</sup> The UN Convention is also not without its critics. For example, for being a document that was prepared without consultation with children and young people themselves, furthermore it was written from a Western perspective and is not necessarily reflective of the needs of all the children through the world that it affects.

<sup>48</sup> Only the USA and Somalia have yet to sign and ratify the UN Convention

<sup>49</sup> Scottish law defines children as those under 16 years, unless they are subject to a Supervision Requirement prior to their 16<sup>th</sup> birthday which carries over into their next year.

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Sutherland 2001). However, as stated earlier, it does not carry the same levels of accountability as does the ECHR, nor does it have the same enforcement mechanisms associated with it. Grant and Sutherland (2001) describe the accountability structure of the UN Convention, when compared to that of the ECHR, as a 'softer mechanism'. Legitimate questions have been raised about how the UN Convention has actually changed or improved the lives of children and young people as well as questioning the impact it can or has actually had? It is perhaps too early to draw any firm conclusions on these questions, however this present study examines one specific area of Scottish law, policy and practice and wonders what impact the UN Convention and its principles has had on the lives of children.

There are clear and identifiable ways in which the UN Convention has provided the impetus to positive changes in both social attitudes about children and to domestic laws and practices in Scotland (Hill & Tisdall 1997). As the analysis below will demonstrate, the core principles of the UN Convention are now more clearly articulated in Scottish child care law. And on an international level, the European Court has increasingly made reference to the UN Convention and has used it when making judgments on matters related to children (Cleland & Sutherland 2001). For example, Article 7 of the UN Convention (the right to know and be cared for by his or her parents) was used by the European Court in 1994 when it considered a case involving the rights of an unmarried father in relation to a proposed adoption (*Keegan v. Ireland*)<sup>50</sup>.

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<sup>50</sup> (1994) 18 E.H.R.R. 342



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This present study was concerned with how the three overarching principles of the UN Convention are defined in Scottish Law and how they are then translated into social work practice. The three principles are: non-discrimination, protection and participation. This chapter will demonstrate how they are translated from international law into current Scottish child care law.

Non-discrimination refers to the rights that all children are entitled to under the UN Convention. This principle is defined by Article 2:

- (1) State parties shall respect and ensure the rights set forth in the present Convention to each child in their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, property, disability, birth or other status.*
- (2) State parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members*

(The UN Convention 1989)

The preamble to the UN Convention 'recognises' that the Universal Declaration of Human Rights and the International Covenants on Human Rights Protection are intended for everyone, but in stating this 'recalls' that the Universal Declaration of Human Rights defined 'childhood' as being entitled to special care and assistance. Article three of the UN Convention acknowledges the inherent vulnerability of childhood and the increased likelihood that adults could exploit children. Consequently, children's rights are also about ensuring children receive special protection and care.

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- (1) *In all action concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.*
- (2) *State parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take appropriate legislative and administrative measures.*
- (3) *State parties shall ensure that the institutions, services and facilities responsible for the care and protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.*

(The UN Convention 1989, Article 3)

Lastly, but essential to the spirit of the UN Convention, is the right of children to participate in decisions affecting their lives. Article twelve embodies this principle:

1. *State parties shall assure the child who is capable of forming his or her own view the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.*
2. *For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceeding affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.*

(The UN Convention 1989)

### Scottish child care law

The key pieces of Scottish legislation to consider in the context of this present study were: the Children (Scotland) Act 1995 [hereinafter referred to as the

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1995 Act]; the Adoption (Scotland) Act 1978 [hereinafter referred to as the 1978 Act]; and the Age of Legal Capacity (Scotland) Act 1991 [hereafter referred to as the 1991 Act]. The 1978 Act remains the primary legislation for adoption, but the 1995 Act introduced particular amendments in Scottish adoption services and as such, both are referred to where relevant in the discussion below.

The 1995 Act was given Royal Assent on 19 July 1997 and all of its four parts took full effect by 1 April 1997. It was the first comprehensive revision of Scottish child care law since the Social Work (Scotland) Act 1968. It brought together different areas of law affecting children in Scotland: family, child-care and adoption law, in an attempt to better co-ordinate them (Tisdall, 1997). Moreover, the 1995 Act was regarded as bringing Scottish child care law more in line with the UN Convention. As Marshall (1997) describes, the 1995 Act provides a conceptual framework which was more sympathetic to the UN Convention, than the previous legislation. The Act itself does not actually mention the UN Convention, but its accompanying guidance and regulations clearly articulate its core principles and it did inform the contents and interpretation of the Act (Hill 2002).

The 1995 Act embodied a paradigm shift in Scotland in the way relationships between parents and their children were defined legally. The language changed from just speaking of parental rights to parental *responsibilities and rights*. Children were no longer regarded as 'possessions' of their parents (Norrie 1998; Fabb & Guthrie 1997). As Norrie (1998) notes, as recently as 1986 when the Law Reform (Parent and Child) (Scotland) Act 1986 was passed, it was considered acceptable to talk exclusively in terms of the rights

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parents had over their children. With the passing of the 1995 Act, children were afforded individual rights and the parent-child relationship was now regarded as one of the responsibilities and rights. This shift clearly reflected the core principles of the UN Convention (Plumtree, 1996). However, as Marshall (1997) cautioned, the actual implementation and mechanisms for translating all of these principles into practice has yet to be fully achieved in Scotland.

Key sections of the 1995 Act are underpinned by four overarching principles. First, the welfare of the child is paramount in the making of any decisions affecting them. Secondly, attention must be given to a child's views, subject to their age and maturity. Thirdly, state intervention should be limited unless shown to be in the child's best interests and lastly, attention must be paid to the child's religious persuasion, racial origin and cultural and linguistic background in developing the plans for any interventions. Although much of this thinking was not new to Scotland, it was now transparently articulated in primary legislation (Norrie 1998). Moreover, this new Act brought Scottish child care legislation more in line with the UK's international responsibilities in respect of the UN Convention (Cleland & Sutherland 2001).

In Scotland, adoption and freeing applications are primarily dealt with by the 1978 Act. As mentioned earlier the 1978 Act underwent some amendments from the 1995 Act. However, the 1978 Act remains the primary piece of legislation in relation to adoption in Scotland. Like the 1995 Act, the 1978 Act is guided by similar overarching principles (as outlined above). When a Court or an adoption agency takes any decision about adoption

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and/or freeing they are required to be influenced by the following principles: the child's welfare throughout his or her life as the paramount consideration, consideration must be given to other options, and adoption is considered only if it is the best choice for the child and consideration of religion, race, culture and language.

### *Legislative differences in Adoption and Long-Term Foster Care*

There are some key similarities between the principles of the UN Convention and those of both the 1978 Act and the 1995 Act. However, there are also some key differences. Although this present study is primarily concerned with children whose permanency path is a Parental Responsibilities Order (PRO), consideration was also given to the law's procedures around adoption. This was done for the following three reasons: first, to make the distinction between the two, secondly to consider what influences a local authority to pursue one option over the other and lastly, to draw out and question some of the differences between them.

Both the 1995 Act and the 1978 Act reflect the age of legal capacity, as it defined by the 1991 Act. The 1991 Act states that at twelve years of the age a child is 'presumed to be of sufficient maturity' to state their views and as such, they have a substantive right to consent in certain key decisions about their lives. For example, with the passing of the 1991 Act, young people in Scotland aged twelve and over were given the right to consent or refuse medical treatment, providing the physician felt them to be capable of understanding the implications of either refusing or accepting the recommended treatment.



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A child's right to consent is stronger in adoption legislation than it is in other aspects of legislation relevant to this present study. Children twelve and over must consent to their own adoption for it to proceed. Interestingly, this is not the case when other long-term options are being considered for a child. For example, a child's consent is not legally required when a Local Authority makes an application for a Parental Responsibilities Order for a child aged twelve and over. However, regardless of which order is being sought, the 1995 Act stipulates that children aged twelve and over are 'presumed' to be of sufficient maturity to have their views considered. This can be a contentious issue, because it presumes that all twelve year olds and above are capable of forming a view (Norrie 1998). This does not take into account those children under twelve years who are fully capable; likewise there may be children who are over twelve, who do not have the maturity or capacity to contribute (Plumtree 1997). This issue is explored in greater detail below when discussing the principle of children's participation in decision making.

When a court is considering adoption for a child, paramount consideration is given to the child's welfare "*throughout his or her life*"<sup>51</sup>, whereas in other long-term decisions, such as an application for a Parental Responsibilities Order paramount consideration is only required throughout "*their childhood*"<sup>52</sup>. This distinction is important because it implies greater permanency and belonging for children who are adopted versus those for whom other long-term routes have been sought. However, it is becoming

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<sup>51</sup> 1978 Act, s. 6

<sup>52</sup> C(S)A 1995, S.86

widely accepted that adoption is not the only path for permanently securing a child's long term care away from his or her birth family. Lowe and Murch (2002) effectively challenged the commonly held definition of 'permanence' and how it is often seen as a synonym for adoption. Their study was critical of the Government's emphasis on reaching adoption targets, whilst ignoring long-term fostering as a secure option for children. Yet despite this, differences remain in how Adoption and Parental Responsibilities Orders are defined legally as noted above.

### ***Key principles in Scottish child care law***

#### ***Welfare of the Child***

This section will consider how 'welfare' as described above in international law is reflected in relevant Scottish child care legislation and the corresponding guidance and regulations. As stated earlier, the 1995 Act defines a child's welfare and well-being as '*the paramount consideration*' when making judicial decisions or when other competent authorities are making any decisions in relation to a child<sup>53</sup>. Other competent authorities include Local Authorities charged with making decisions about children's welfare. There are two key areas in this present study where a child's welfare has great significance. First, how and why a child's welfare would be better promoted and protected by being removed long-term from their birth families? Secondly, how a child's welfare is both protected and promoted whilst fulfilling his or her right to participate in the decision making processes leading to his or her permanent plan? Long-term decision making

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<sup>53</sup> It should be noted that when public safety is at risk, the child's welfare can be considered secondly. This would present as an issue, if the court or a Children's Hearing were considering Secure Accommodation for child.

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on behalf of vulnerable children and families is not easy for adults, let alone for the very children for whom these decisions will most affect. As this present study will show the processes associated with making these types of decisions are complex and highly emotive. Associated with this complexity is an inherent and instinctive desire to 'protect' children from information and/or processes that may cause children further emotional harm (Reugger 2000; Thomas 2002). As Schofield and Thoburn (1996) point out, having children participate in the very system that is set up to protect them, presents adults with particular and multifaceted challenges. How to both respect and promote a child's right to know about their lives and to effectively facilitate his or her participation in decision making, is explored in more detail below and indeed in greater depth throughout this present study.

Under the 1995 Act, a Local Authority has the statutory duty to "safeguard and promote the welfare of a child in need".<sup>54</sup> A 'child in need' is defined as one "who is unlikely to achieve or maintain a reasonable standard of health or development without the provision of Local Authority services".<sup>55</sup> This is consistent with the protection rights which feature in the UN Convention, such as those found in Articles 3<sup>56</sup> and 19.<sup>57</sup> Additionally, a Local Authority by safeguarding and promoting a child's welfare "shall promote the upbringing

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<sup>54</sup> The 1995 Act s. 22 (1)(a)

<sup>55</sup> The 1995 Act s. 93 (4)(a)

<sup>56</sup> The UN Convention, Article 3 – Best Interests of the Child – All actions concerning the child should take full account of his or her interests. States are required to provide adequate care when parents or others responsible fail to do so.

<sup>57</sup> The UN Convention, Article 19 – Protection from abuse and neglect – the state has an obligation to protect children from all forms of maltreatment perpetrated by parents or others responsible for their care, and to undertake preventative programs in this regard.

of such children by their families".<sup>58</sup>. This is based on the well supported position that the best place for a child to be brought up is with his or her family (Norrie, 1998). But where this is neither possible nor found to be any longer in a child's best interest, then a local authority is empowered to take steps to care for and protect a child 'in need' in the short term and where necessary – long-term<sup>59</sup>. This aspect of Scottish child care law reflects Article 9<sup>60</sup> of the UN Convention, which states that when a child is suffering from abuse or neglect, the Government can and should intervene to provide that child with suitable protection and support.

One of the overarching principles of the 1995 Act is that the welfare of the child should be '*the paramount*' consideration in making any decisions affecting that child. The 1995 Act goes beyond that which is provided for in the UN Convention in relation to the principle of welfare. Article 3 of the UN Convention only requires that a child's interest be '*a primary consideration*'. In the drafting of the UN Convention, there were many debates around this particular issue. As Norrie (1998) points out, the wording of this principle in the 1995 Act 'neatly' side-stepped what he described as a 'rather sterile argument'? The debate centred on the wording of the welfare principle and the following three options were considered: 1) the paramount consideration, 2) the primary consideration, 3) a primary consideration. As Marshall (1997) discusses in her analysis of these debates, where a child's interest were regarded as 'paramount', no other interests

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<sup>58</sup> The 1995 Act s.22 (1)(b)

<sup>59</sup> The 1995 Act s. 25

<sup>60</sup> The UN Convention, Article 9 -: Separation from parents: a child has a right to live with his/her parents unless this is deemed incompatible with his or her interests.

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could be set up in opposition to them. Where the child's interests are 'the primary consideration', other interests could potentially outweigh those of the child, but that the child's interest should still take precedence in the decision making. Where the child's interests would be regarded as 'a primary consideration', other issues could in fact be considered such that they outweigh those of the child, but that children's interests should still be taken seriously. Clearly, the drafters of the 1995 Act also grappled with how to define welfare and concluded that the wording '*the paramount consideration*' was most appropriate for Scotland.

### *Views of the child*

A child's right to be consulted and have their views and wishes considered is one of the overarching principles of the 1995 Act. With its explicit inclusion in the 1995 Act, Scotland's furthered its progress in meeting international obligations under the UN Convention. Article 12 of the UNCRC states:

(1) *State parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with their the age and maturity of the child.*

(2) *For this purpose, the child shall in particular be provided with the opportunity to be heard in any judicial and administrative proceeding affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.*

This principle is effectively reflected in the 1995 Act in section 6 - *Views of Children*

*A person shall, in reaching any major decision, which involves –*



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*(a) his fulfilling a parental responsibility or the responsibility mentioned in section 5 (1) of this Act; or*

*(b) his exercising a parental right or giving consent by virtue of that section, have regard so far as practical to the views (if he wishes to express them) of the child concerned, taking account of the child's age and maturity, and to those of any persons who has parental responsibility or parental rights in relation to the child (and wished to express those views); and without prejudice to the generality of this subsection a child twelve years of age or more shall be presumed to be of sufficient age maturity to form a view.*

The legislation intends that a child has the right to have his or her views and wishes considered, but that this is not be equated with 'self-determination'. Rather it concerns a child's basic right to be involved in the decision making processes which directly impact his or her life (Hodgkin and Newell, 2002). This is reflected in Scottish Legislation, by the addition of 'have regard' in how it is defined. In other words, a parent or guardian must 'have regard' and listen to the views of the child, but need not follow them. Similar to the UN Convention, this particular provision requires that a parent and/or guardian seeks out and gives due consideration to any expressed views, including those of any children affected most by a decision. However, a child's expressed views and wishes must always be balanced alongside their best interest.

As noted above s. 6 (b) of the 1995 Act states that a child's views (and other relevant persons) must be sought "so far as is practicable". This could include scenarios where it is not possible to obtain the views of a child or another relevant person for example, if a parent was not contactable (as clearly evidenced by attempts to contact them) and a decision needed to be taken in respect of a child or if a child was found to be incapable of expressing a view by a competent expert (e.g. a medical practitioner). However, this clause



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should not be used as an opening for a child's views not to be considered and it is essential to demonstrate that efforts were made to obtain the views of both children and other relevant persons to the child (Norrie 1998). As well, s. 6 (b) of the 1995 Act states "if he wishes to express them". A child is not under any obligation to express their views however, they must be offered the opportunity. The Report on the Twenty-Second Session (September/October 1999) of the Committee on the Rights of the Child<sup>61</sup> made reference to how children must be supported in expressing their views, when they stated how parents and those with parental responsibility in fulfilling their duties under Article 12 "*take appropriate measures to support the right of child to express their views*".<sup>62</sup>

Article 12 of the UNCRC does not set a lower age limit on a child's right to express any views freely. The Manual on Human Rights Reporting 1997 states:

Pursuant to the provisions of this article, State parties have a clear and precise obligation to assure to the child the right to have a say in situations which may affect him or her. The child should therefore not be envisaged as a passive human being or allowed to be deprived of such right of intervention, unless he or she would clearly be incapable of forming his or her views. This right should therefore be ensured and respected even in situations where the child would be able to form views and yet be unable to communicate them, or when the child is not yet fully mature or has not yet attained a particular older age, since his or her views are to be taken into consideration 'in accordance with the age and maturity of the child.'<sup>63</sup>

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<sup>61</sup> This is the committee at the United Nations Human Rights Council, which has responsibility for the UN Convention on the Rights of the Child.

<sup>62</sup> Report on the 22 Session (September/October 1999) Committee on the Rights of the Child. Para 291 (a) (w) (x) and (y).

<sup>63</sup> 1997 Reporting Manual p. 426

Yet, in Scottish legislation, a child of twelve years or more is 'presumed to be of sufficient age and maturity to form a view<sup>64</sup>' and as referred to earlier, in cases of adoption, a child over twelve years must also consent to their own adoption. This presumption does not mean that children under the age of twelve are not able to form a view and that they should not have these considered equally to those of a child over the age of twelve years. However, one wonders about how this translates into practice and whether or not there is a belief about when children's views should be sought on which issues, depending on their age. Article 12 of the UN Convention states "*the views of the child being given due weight in accordance with the age and maturity of the child*", emphasising an obligation listen to children's views and to take these seriously (Hodgkin & Newell 2002). The UN Convention rejects the idea that there should be age barriers in place and that due weight should be given to a child's views in accordance to the 'evolving capacity' of the child (Hodgkin & Newell 2002). In other words, the UN Convention is based on the premise that children can and do form views at a very young age and as they develop, they merely increase their ability to contribute to decisions about their lives.

### ***'No Order' principle***

Section 16 (3) of the 1995 Act sets out the 'no order principle'. It means that a court or children's hearing shall not make an order unless they consider that it would be better for the child that the order is made than that none should be made at all. Cleland and Sutherland (2001) argue that the origins of this principle is not the UN Convention, rather it reflects an important principle

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<sup>64</sup> 1995 Act s. 16 (2) (c)

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of proportionality found in the ECHR. Norrie (2001) states *“a combination of the no-order presumption and the principle of proportionality creates a new concept – the minimum intervention principle, that is to say the court or hearing should presume that is to make no order (or that it is to terminate any existing order, but that if an order is to be made (or continued) it must be designed in such a way as constitutes the minimum intervention necessary to achieve its purpose”* (in Cleland in Sutherland 2001 p. 134). In other words, where any order is made in respect of a child, it must be shown to fulfil the child’s best interest in a way that would not be possible, if the order was not made. This principle is particularly relevant to consider when local authorities are developing permanency plans for children, as the section will reveal the legal routes to permanency result in significant and lasting orders.

### *The law and permanency*

It is important to define permanence for the purposes of this present study before exploring the legal pathways to permanence for looked after children in Scotland. Permanence, by conventional definition implies something that is going to final and will not change. For much of the twentieth century, where children were not able to grow up in their birth family networks, adoption was regarded as the only real means of achieving ‘permanence’ (Steinhauer 1991; Lowe & Murch 2002). However, over recent decades the exclusivity of adoption as the most secure route to permanency has been recognised as narrow and limiting. Researchers and practitioners have expanded the meaning of permanence to include other and equally relevant permanency options for children – namely long-term fostering (Lowe & Murch 2002; Plumtree 2003). This next section reviews how international

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law considers permanency for children and then it defines what legal options are available for children in Scotland.

The UN Convention presumes the best place for children to grow up is with their birth families<sup>65</sup> (Hodgkin & Newell 2002). This internationally defined standard is reflected in UK legislation, which also promotes a child's family as the most desirable place for a child to grow up (Hill & Tisdall, 1997)<sup>66</sup>. In keeping with this, both the UN Convention and UK Legislation place a duty on Governments to provide families with support to maintain children with their families<sup>67</sup>. Having said this, the international and national law recognise that there will be instances where children will require planning and short or long term care outside their birth families, to protect and promote their best interests (Hill & Tisdall 1997). For example, a child may be orphaned with no other suitable family members to care for that child, there could be a family illness, or it has clearly demonstrated that it would not be in the child's interest to be raised with their birth families, mostly likely a direct consequence of it being an abusive and/or neglectful environment.

The onus in law and practice is rightly placed on the Government to prove that it is contrary to a child's best interest to be raised within his or her birth

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<sup>65</sup> The definition of birth family has changed over recent decades, in light of egg donor births and surrogate births. For the purposes of this research, birth parents refer to the child's biological parents at the time of their birth. This would include their birth mother and father, providing the father was either married to the child's mother at the time of the child's birth or was registered as the child's father (as per Scots Law).

<sup>66</sup> C(S)A 1995 s. 22 (1)

<sup>67</sup> Article 18 of the UN Convention refers to the principle that both parents have a joint responsibility for bringing up their children, and that the state should support them in this task. Section 22 of the C(S)A 1995 refers to the 'promotion of children in need' and it places a duty on local authorities to 'promote the upbringing of children in need by their families by providing a range and level of services appropriate to the children's need.

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family (Hodgkin and Newell, 2002). Articles 7 and 8 of the UN Convention expresses a child's intrinsic right to be aware of his or her identification and nationality (e.g. his or her family name and place of birth) and where possible a child should be always be raised within his or her family of birth. Article 7 states *"the child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire nationality and, as far as possible, the right to know and be cared for by his or her parents"* (The UN Convention 1989). Although this basic right of a child to be raised within his or her birth family is firmly entrenched in the spirit of the UN Convention, it is qualified by *'so far as practical'*. In other words, it recognises that this may not always be possible and/or in a child's best interests. Article 8 of the UN Convention reads *"state parties shall undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognised by law without unlawful interference"* (The UN Convention, 1989). Articles 7 and 8 of the UN Convention are often considered in conjunction with Article 9, which requires that *"a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with domestic laws and procedures, that such separation is necessary for the best interests of the child"*.

Consequently, Governments are empowered to set up national legislative frameworks to ensure fair and legitimate due processes to determining whether or not a child's best interest can be secured whilst growing up with his or her birth family. As Plumtree (2003) surmises, if a child is not able to grow up with their birth families, it is essential that a long-term carer with some form of responsibilities and rights is established: to protect the child; to



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make decisions where appropriate for the child; and to secure the carer against inappropriate outside interference. This present study explores the processes with one permanency option (Parental Responsibilities Orders), however this next section briefly summarises all the current legal permanency options for children in Scotland.

### *Legal routes to permanency*

When a child is looked after<sup>68</sup> by a local authority away from their birth families, there are four main legal options for permanency for that child (Plumtree 2003). They are:

- return home; or
- be made the subject of a residence order under s. 11 of the 1995 Act, naming individual carers and giving them parental responsibilities and rights; or
- be adopted, with or without a freeing order first.
- be made the subject of a parental responsibilities order (PRO) under s. 86 of the 1995 Act, giving the local authority parental responsibilities and rights.

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<sup>68</sup> As established in Chapter One [Introduction], a child is looked after when they are: provided with accommodation from the local authority under s. 25 of the 1995 Act; the subject of a Supervision Requirement (whether or not that requirement as a condition of residence; the subject of a place of safety order, child protection order, parental responsibilities order; or where another UK local authority has responsibilities over a child resulting from an order made anywhere in the UK (it will have a effect in Scotland) [The 1995 Act s.17 (6)].

### ***Return home***

As discussed in earlier sections, the most desirable place for children to grow up is within their birth family networks. Most looked after children are never placed away from their homes, but if they are it is normally for a short period only. However, it is crucial that the assessment and planning of a child's rehabilitation home begin as soon as that child becomes accommodated outside the family home (Steinhauer 1991; Lowe & Murch 2002). Studies have consistently shown that if children are not successfully returned home within the first twenty-four months of being accommodated, then the chances of this happening are greatly reduced (Rowe & Lambert 1973; Triseliotis 2002; Lowe & Murch 2002; and Monck et al 2003). Rowe & Lambert's (1973) landmark study specifically found that children not returned home within the first six months of being accommodated, had their chances of being successfully returned home greatly diminished. Consequently, local authorities must have in place efficient systems, supports and assessment frameworks for making early and decisive decisions for children. Where it is determined that a child is unable to return home, then local authorities must consider plans for permanent arrangements. The next sections will review the legal options available for securing the permanency of children who are unable to be returned home.

### ***Residence order***

Section 11 of the 1995 Act defines residence orders, which have the effect of giving someone specific responsibilities and rights to a child, who did not have any previously. Under a section 11 order, a birth parent retains parental responsibilities and rights, except the right to reside with their child.

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In other words, a child who is the subject of a section 11 residence order would be cared for on a day to day basis by someone other than his or her birth parent(s). Also with this order, restrictions can be placed on a birth parent's contact with his or her child, but this would only happen if the court had been satisfied that such restrictions were required to protect and promote the interests the child. Section 11 orders are typically used in cases where family members or friends take over the day to day care of a child and there is not a protective need for local authority to monitor child's well-being and development. Anyone with a vested interest in a child (other than a local authority) can go to court and apply for a section 11 order. A child who is the subject of a section 11 order is not looked after and as such the local authority has no explicit duties<sup>69</sup> in relation to that child (unless circumstances change and he or she becomes the subject of another order defined in s. 17 (6) of the 1995 Act, resulting in the child becoming looked after).

### *Adoption*

Adoption occurs when a child's birth family is replaced in law by a new adoptive family. In making this order, all legal ties and links with the birth family are essentially terminated. The child becomes as if they were born in the adoptive family in the eyes of the law (Plumtree 1997). Similar to a PRO, if a child is to be adopted anyone with parental responsibilities and rights must either consent to the adoption, or have his or her consent dispensed

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<sup>69</sup> S. 17 (1) of the 1995 Act outlines a series of duties that a local authority has in regard of children who are looked after (under s.17 (6))

with.<sup>70</sup> Consent can be dealt with in two ways. First, in the adoption application itself or secondly, it could be done in an earlier process known as 'freeing for adoption'. Additionally and unlike a PRO, the consent any child over the age of 12 is also required prior to the making of an adoption order.

### ***Parental Responsibilities Order (PRO)***

A parental responsibilities order (PRO) results in the full transfer of parental responsibilities and rights from the birth parent(s) to a local authority. The legal provisions for a PRO are outlined in sections 86 through 89 of the 1995 Act. Only the Sheriff Court can grant such an order and only a local authority can apply for one. A PRO is normally sought on behalf of a child by a local authority as part of a long-term plan to safeguard the future of a child, when re-integration back to their family home appears unlikely or is thought to be undesirable but where there is a clear desire for the child to remain linked to their birth family (Griffiths & Edwards 1997).

The effect of a PRO is that a child's birth parent(s) loses all responsibilities and rights in respect of the child, except for two key rights. First, birth parents maintain the right to consent to or refuse their child's adoption and secondly, unlike an Adoption Order, a parent, a child or another person with interest can ask the court to consider a variation of the PRO or to actually discharge it. Should a PRO be challenged and providing the Court is satisfied any change will serve the interest of the child and/or there has been a change of circumstances, applications to vary or terminate a PRO can be considered. Even with this possibility of altering or revoking the order, a

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<sup>70</sup> The criteria for dispensing with consent in adoption are the same as those in relation to PRO's and have been stated in an earlier section of this chapter.

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PRO is considered a very extreme order as it essentially leaves children with a local authority as a corporate parent to the child (Griffiths & Edwards 1997; Plumtree 2003).

Before granting a PRO, the Court must be satisfied that each 'relevant person'<sup>71</sup> either consent to the application, or has had their consent 'dispensed with'. Section 86 (2) (b) of the 1995 outlines the grounds for dispensing with 'consent' from a relevant person and they are:

- is not known, cannot be found or is incapable of giving agreement; or
- is withholding agreement unreasonably; or
- has persistently failed without reasonable cause to safeguard and promote the child's health, development or welfare or, if the child is not living with him or her, to maintain personal relations and direct contact with the child on a regular basis; or
- has seriously ill-treated the child and re-integration to the same household is unlikely.

In granting a PRO, there is a presumption that the child will continue to have contact with any person who formally had parental responsibilities and rights and any siblings or other extended family members with whom he or she had established relationships. This is in keeping with a child's right to

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<sup>71</sup> The 1995 Act s. 93 (2) (b) states that a 'relevant person' in relation to a child means – (a) any parent enjoying parental responsibilities or rights under Part I of the 1995 Act; (b) any person in whom parental responsibilities or rights are vested by, under or by virtue of this act; and (c) any person who appears to be a person who ordinarily (and other than by reason only of his employment) has charge of, or control over, the child.



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maintain family relationships and with a parent's responsibility to maintain contact with a child, although they may not be residing together. In some cases, the importance of continuing this relationship may have influenced a decision to not pursue a more pervasive permanency option, such as adoption. However, the PRO is constructed in such a way that the child has a right of continued contact, not the parent, as it did in previous legislation.<sup>72</sup> Consequently, ongoing contact between a child and other key people (most often their birth families) assumes a rights perspective in favour of the child. Rather than being constructed as a parents' right to continue having regular contact with their child, this legislation has mechanisms to ensure that any contact is in a child's best interest (Griffiths and Edwards 1997). Moreover, when making any decisions in relation to the child, his or her welfare is the paramount consideration and if the court is satisfied that contact could be detrimental or distressing to the child, then levels contact under a PRO would be specific to reflect this.

### Conclusion

Over the last several decades there have been significant shifts in how parent-child relationships are both socially and legally constructed (Norrie 1997). Children are gradually being defined in law as individual persons in their own right versus being seen in terms of the rights their parents have over them (Hill & Tisdall 1997). This chapter has reviewed key sections of international and national legislation that is relevant to permanency planning with looked after children in Scotland. In doing this, it considered what key principles underpin the legislation and what routes are currently

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<sup>72</sup> The C(S)A 1995, s. 88(1)

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available for children requiring permanent care away from their birth families. As noted throughout, the most desirable place for children to grow up is with their birth families, but where this is not possible or desirable, local authorities are empowered by central Government and legislation to take early and significant decisions for children to secure their long-term stability, growth and development.

This present study is concerned with those children for whom the permanency plan was a Parental Responsibilities Order and as this chapter has illustrated, local authorities are charged with making decisions which reflect not only a child's best interest, but also his or her views and wishes. This present study explores the complexities of translating this aspiration into practice.

Opportunities for Children's voices - This chapter involved a review of specific sections of relevant legislation and policy - including the Children's Act 1989 and the Children's Act 2004 - and the views of children who were interviewed in phase four of this study (for details on how data was collected see Chapter Three (Methodology)). The data collected from phase five is included in this chapter as it complements the themes that emerged in the interviews during phase two.

As discussed in the Chapter Two literature review, children's rights are central to this present study. Children's rights promote the participation and protection of children as both active agents and as active citizens in the development of policy, practice and decision making - particularly where it

\* The local authority also reported the children's views, although it deals with issues such as adoption and other permanency issues as discussed in the final chapter.

\* As explained in the Chapter 3 Methodology, the 26 children involved were one fifth of those children whose names were given for possible interview - and as stated in 3.1 of the study were actually interviewed in the final sample.

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### Legislation into Policy and Practice

#### Introduction

This chapter will discuss data generated from phases one, two and five of this present study. The findings from phase one were obtained through a documentary review of the local authority policy on permanency planning. This review was particularly concerned with the way local policy reflected the principles of protection and participation as they are laid out in international and national legislation. The findings from phase two emerged through a thematic analysis of semi-structured interviews with six members of an Adoption and Permanent Care Panel [hereafter the Adoption Panel<sup>73</sup>], and two other staff members – a Director of Planning and a Director of Operations for Children's Services. Phase five involved a review of specific sections of twenty-one looked after children's files<sup>74</sup> – including the eleven children who were interviewed in phase four of this study [for details on how data was collected see Chapter Three: (Methodology)]. The data collected from phase five is included in this chapter as it compliments the themes that emerged in the interviews during phase two.

As discussed in the Chapter Two (Literature Review), children's rights are central to this present study. Children's rights promote the participation and protection of children as both service users and as active citizens in the development of policy, practice and decision making – particularly where it

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<sup>73</sup> This local authority calls this panel the 'adoption panel', although it deals with cases both - for adoption and other permanency routes as discussed in the legal chapter.

<sup>74</sup> As explained in the Chapter 3: Methodology, the 25 files reviewed were the files of those children whose names were given for possible interview – and as noted only 11 of these were actually interviewed in the final sample.

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directly affect their lives (Hayden 1999, Marshall 1999). As such, the analysis reflected in this chapter was concerned with the degree to which looked after children are involved in case management decisions for permanency planning : the degree to which it is constructed in policy and procedure and then how this involvement was described and implemented in practice by professionals. Alongside this discussion, consideration is also given to how the principle of protection is constructed and implemented by local policy and then into practice. The following lines of investigation guided the analysis reflected in this chapter:

- 1) To what extent does local policy reflect the principles of protection and participation as they are defined by international and national legislation [outlined in Chapter Four (Legal Framework)]?
- 2) To what degree do other factors influence this policy – according to the professionals, and if so what are those factors?
- 3) How are the principles of children's participation and protection described by the professionals?
- 4) How are the policies translated into practice by members of the Adoption Panel?
- 5) What vehicles are identified for children's participation in the decision making processes around permanency planning – according to both the policy and the professionals?

This chapter's findings broadly correspond with other studies, which have argued that whilst there has been a rhetorical shift in legislation and policy acknowledging children's participation rights, there continue to be struggles with achieving a balance between this principle and the paramount

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responsibility of adults to protect the well being of children in practice (Hoggan 1991; Cantwell & Scott 1995; Marshall 1999; Thomas & O'Kane 2000; Cleland & Sutherland 2001; and Thomas 2002). Furthermore, by examining these two principles at different levels (legislation, policy and practice) it would appear that they (particularly participation) are interpreted and implemented differently at various structural and policy levels and importantly amongst professionals themselves working in the local authority in this present study. Finally it is evident in both the policy and practice reviewed in the present study, that the predominant ethos in permanency planning work with looked after children centres on protection as opposed to actively involving the group most directly affected – the looked after children.

### **Phase One**

#### ***From International Legislation into Local Authority Policy and Procedure***

As detailed in Chapter Four (Legal Framework), current Scottish child care legislation conforms to overarching principles laid out in the United Nation Convention on the Rights of the Child [hereafter the UN Convention]. The UN Convention was designed to both promote and protect the rights of children (Hill and Tisdall 1997). It is based on the premise that children have equal value to adults, but that they also require special care and protection (The UN Convention 1989: preamble). The UN Convention has four three main principles - protection, participation, provision and non-discrimination.



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The UN Convention defines protection in its third Article – “in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative bodies, the best interest of the child will be a primary consideration” (the UN Convention, Article 3[1]). Article 12 sets out children’s right to participate, where it states “state parties shall assure the child who is capable of forming his or her views the rights to express those views freely in all matters affecting the child, the view of the child being given due weight in accordance with the age and maturity of the child” (the UN Convention, Article 12[1]).

The Children (Scotland) Act 1995 [hereafter the 1995 Act] reflects these principles in its three overarching principles which are: (i) the welfare of the child is to be the court’s paramount consideration, (ii) they may take an order only when they are persuaded to do so is better than making no order at all, and (iii) the child is to be given the opportunity to express views on the decisions the court has to make and the court must take appropriate account of these views (Norrie 2000). These principles are expanded upon in Volume 3 of Scotland’s Children, which outlines the national regulations and guidance for the Children (Scotland) Act 1995 on adoption and parental responsibilities orders. In relation to the first principle of the welfare of the child the guidance states:

*A court will only make a parental responsibilities order on the basis that making an order would be for the benefit of the child. Depriving a parent of his or her parental responsibilities is a very serious step and a local authority should apply for an order only where it is clearly in the child’s best interest.*

(Scotland’s Children – the Children (Scotland) Act 1995 Regulations and Guidance, Volume 3 Adoption and Parental Responsibilities Orders p. 60).

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The guidance also makes reference to the child's views and how these must be sought and how the court will have regard for them.

*The sheriff will, taking account of the age and maturity of the child concerned, give the child an opportunity to express his or her views if he child wishes to do so, about making an order and any conditions it is proposed to attach to the order, and will have regard to the views of the child.... The local authority should discuss plans with the child, so that he or she can understand the effects of the parental responsibility, so far as can be expected at his or her age or maturity. Different methods of communication may be needed to help a child with a disability to express his or her views. The local authority will need to demonstrate to the court that an order is in the child's best interest whether or not this view is accepted by the child.*

(Scotland's Children – the Children (Scotland) Act 1995 Regulations and Guidance, Volume 3 Adoption and Parental Responsibilities Orders p. 61).

The local authority in this present study has one key manual that informs all planning for looked after children - called 'Looked After Children'. It consists of a number of sections, which covers areas in relation to looked after children within this local authority. The most current manual is dated 1997 although some sections have been updated since that time<sup>75</sup>. The section which relates to permanency planning in this manual was reviewed during phase one of the present study for the purpose of mapping how the policy of this local authority considers the principles of protection and participation as intended by international and national legislation [as briefed above and in greater detail in Chapter Four (Legal Framework)].

Table 5.1 below quotes particular sections from the Looking After Children manual. The sections presented here are those which demonstrate the

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<sup>75</sup> At the time of writing, I was advised that the local authority policy on Permanency Planning was being completely re-written and due to be published in 2004.

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process through which permanency planning for looked after children is achieved – from the point of being looked after to that of being considered for placement with an alternate permanency family. When a child is first looked after, s/he is the subject of a case record and review.

A case record is used to record the child's progress and is completed by his/her allocated social worker. Child care reviews are described as the primary vehicles for monitoring the effectiveness of child care planning and for approving and confirming decisions about children and young people away from home and significantly, they are also identified as being the first place where plans for the child's future will be discussed – including consideration of applications for Parental Responsibilities Orders [see Chapter Four (Legal Framework) for more details]. The latter sections reflect the point at which consideration is given to permanency planning outside the child's birth family through a Parental Responsibilities Order, with a permanent alternate family.

Table 5.1 shows that the local authority in the present study has committed in policy to implementing and putting into practice the core principles of both the UN Convention and the 1995 Act. It reveals that the principles of both protection and participation [as defined in legislation and reflected above] are considered throughout key stages in permanency planning. However, despite the recognition given to seeking the views of children throughout the care planning process - the wording of this policy implies a more protective model rather than one which actively promotes the *children's* participation. For example, in the first instance where a child becomes looked after by a local authority, the priority is 'safeguarding their well

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being' and only where 'practical' will their views be sought. The policy does not go on to define the limitations of 'practical' and there is tremendous scope here for interpretation. Should a child's case proceed towards permanency away from their birth families, the policy states that the child and his/her family should be kept aware of the decision making process throughout and that efforts be made to obtain their views on options being considered – and that this should be clearly documented in the child's file. It does not, however emphasise the active engagement of the child and their family in the process – in many ways the child and their birth family are described as outsiders to the process. This point is further evidenced by the section on PROs, which suggests that children's views on the 'proposed' plan should be important subject to their age and understanding. This suggests two things, first the plan could be developed without the child's views and wishes informing it and secondly the arbitrary factor of age is strengthened by the word 'should' (i.e. rather than must) in that if the child is thought to be too young to understand, then their views on the plan will be considered less important.

Policies are meant to provide guidance to professionals and are not intended to be scripts for how practice should and must progress. However, they are important in setting the tone and priority of practice. Few would argue the priority of safeguarding children's well-being. However some sections (introduction, case records and parental responsibilities) quoted in Table 5.1 suggest a sense of ambiguity and hesitancy of how and when to actively involve children in decisions around their care. This apparent conflict of

balancing children's right to protection and participation is re-enforced throughout this chapter.

**Table 5.1: Looked After Children Manual: Mapping the principles of protection & participation**

Section	Protection	Participation
Permanency Policy: Introduction	<i>The paramount concern for the council <b>must</b> be to ensure the child's welfare is safeguarded throughout their life.</i>	<i>In all decisions about current care or future care of the child, his/her views must be sought and the Council must have regard to those views. This should not be seen as a child making decisions about his/her their future making about the, but rather the council must seek the child's views and respect them in the decisions that the council makes.</i>
Adoption and Permanent Substitute Family Placements (planning of): Principles	<i>Every effort will have been made to enable children to grow up within their birth family network or with other adults whom they have an attachment, where this is consistent with safeguarding and promoting their welfare.</i>	<i>The views of children and significant adults will be sought at all stages of planning for permanent care.</i>
Case Records	<i>No specific comment</i>	<i>The case record should describe the process of decision making so that the view of the child and his/her parent can be easily found and related to</i>



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		<i>the decisions taken and the arrangements made.</i>
Children Looked After by the Local Authority	<i>Over-riding principle of safeguarding and promoting the child's welfare as the primary objective.</i>	<i>So far as practical have regard to the views of the child.</i>
Child Care Reviews	<i>No specific comment</i>	<i>Important that parents and children are kept fully informed as it contributes to effective planning. (Section 1, document 8)</i>
Parental Responsibilities Orders	<i>The department expects that a PRO will only be applied for where a comprehensive assessment of the child's needs has lead to a decision at an Adoption and Permanent Care Panel meeting that a child is in need of long term care and that re-integration to their family is not in their best interest.</i>	<i>The views of the children will be important, if they are of an age to understand what is being <b>proposed</b>...and also the views of the parents and any other relevant person who is not a parent, but has parental rights in relation to the child. (Section 1, Document 20)</i>  <i>The child's views on such an application [PRO] need to be heard and the views of the child's parents also must be ascertained and efforts of this must be documented</i>

The next section considers how this policy is interpreted and put in practice by professionals working in this local authority. Significantly it reveals that despite the existence of this policy, which is reviewed above – very little mention of it is made by the professionals interviewed in this study.

### Phase Two

#### *Legislation and policy into practice: Interviews with Panel Members*

Phase two of this study involved semi-structured interviews with members of one of the four area Adoption Panels<sup>76</sup> and two other relevant staff members from the local authority. As outlined in Chapter Three (Methodology), one of the key purposes of these interviews was to consider how the principles of protection and participation were understood and put into practice by the group of professionals responsible for making final local authority recommendations<sup>77</sup> on looked after children's permanency plans. The analysis of these interviews revealed a variety of views within the local authority in the present study on how the two principles of protection and participation are actually implemented into practice. Although there was considerable importance attached to listening to the views and wishes of children, the degree to which this actually happens in permanency planning practice was at best inconsistent, according to those participants interviewed here. The reasons for this were varied and are each considered below in more detail.

#### **International Law into practice**

During the interviews, participants were first asked to identify any aspects of international law, which in their view had an impact on internal permanency planning policies and practice. Despite the international significance and

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<sup>76</sup> In this Local Authority there are four Adoption Panels – only one was interviewed for this research, reasons for which are described in Chapter 4: Methodology.

<sup>77</sup> As explained in Chapter 4: Methodology the Adoption panel do not make decisions, they make a recommendation which then goes to the Agency Decision Maker for a final decision to be taken. The Local Authority must then seek the advice of a Children's Panel and apply to the Sheriff Court for the recommended order (Freeing for Adoption, Parental Responsibilities Order etc...). These options are explained in Chapter 5: Legal Framework.

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child focused approach of the UN Convention, it was not regarded as the most influential part of international law on the operations of this Adoption Panel; rather as the analysis will reveal the European Convention of Human Rights [hereafter the ECHR] was described as having a more direct impact on the practices of the panel.

There was general support among all eight of the participants for the principles of the United Nations Convention on the Rights of the Child [hereafter the UN Convention]. However, there was considerable variance in the views about the actual impact it has had on local policy and practice. Only one of the eight participants saw the positive impact of the UN Convention on practice; other respondents were more ambivalent.

Yes, I do think it has had an impact and I do think it has had a positive impact.

(Adoption Panel Member)

I have not noticed it has had an actual impact. I think perhaps individually as panel members... I suppose I have taken it on board.

(Adoption Panel Member)

Despite all eight professionals describing the UN Convention as being an important force in furthering the protection and participation rights of children, several acknowledged that its actual impact on permanency planning practice had not gone far enough. As one member stated:

You know you must recognise that it [the UN Convention] exists and that it is an important piece of legislation and that we have to recognise and work within the boundaries of it...but I don't know that collectively it has had a massive impact.

(Adoption panel member)

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And another participant describes how she heard about it, but it does not have a high priority in practice.

We have had training sessions where it is mentioned, but it [the UN Convention] is not high profile.

(Adoption panel member)

Another participant echoed these views, but acknowledged that despite the principles of the UN Convention and their importance to practice there are times when children's involvement in decision-making is not taken seriously enough. In other words, although children's views and wishes may be invited in by local authority in the present study, they are not afforded the level of attention intended by the UN Convention.

The participant below refers to 'tokenism'. Cloke and Davies (1995) describe tokenism as involving children and young people in a decision making process as a one-off without any preparation, follow-up or ongoing support. Further studies considering the involvement of children in decision making have also identified tokenism as a problem (Hayden et al 1999; Marshall 2000 and Thomas & O'Kane 2000). Later discussions with children in the present study [Chapter Six (Children's voices)] reveal a sense from their experiences that 'tokenism' is an issue in relation to how children are involved in the development of their permanency plans.

I am sure that it (the UN Convention) has generally influenced the work of the department as a whole, but I am sure that it has not gone far enough and I am sure there may be some tokenism.

(Adoption Panel member)

One participant described the rights of looked after children (particularly participation) in social work practice as evolving and happening over time.

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In saying this, he also identifies the importance of legislation as a starting point for shifting priorities:

I remember training with someone from Northern Ireland who was going on about rights and we all thought, what a strange concept to be battling on about...a particular experience of rights being ignored...they were quite sensitised to that. So it has really impacted through the legislation, through the principles that have been adopted through the Children (Scotland) Act have made them compatible, or relatively compatible with the Convention on the rights of the child, so yea I think at different stages the rights of the child have taken a great or lesser focus or priority – but it is only when its included in legislation that its really taken a greater role in social work.

The European Convention of Human Rights [hereafter referred as the ECHR] was identified by four of the participants as having a greater impact on the policy and practice of this local authority. However responses suggest the reasons for this are not about furthering a child's rights to participate rather they were based on a shift towards the rights of parents.

This echoes Sutherland & Cleland's (2001) questions on whether the ECHR will be a hindrance or help in promoting children's rights, when they examined 'How real are children's rights in Scotland'? They cautioned that there is a *"danger that the due process requirements and the right to respect for private and family life could be interpreted in a adult centric way, making the European Convention a dormant virus waiting to attack children's rights"* (Sutherland & Cleland 2001). Two participants described the ECHR as posing a potential threat to the centrality of the child in the permanency planning process and expressed concern that the ECHR, will in fact take away from making decisions in the best interest of the child. In the first quote below a member suggests that one of the implications of the ECHR



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may be that parents will be invited to attend meetings<sup>78</sup> and in doing this, it could result in the interests of the child becoming secondary to those of the parents at the actual meeting. The second member expressed a concern that the ECHR is more focused on parents' rights versus those of children and within this emphasis, the child's rights could be lost.

Some of the concerns are about how the ECHR will impact on panels [Adoption Panels]. There is a movement towards how a child's parent can be involved in the process, whether or not this mean they attend the panel or not, slightly more formal at least, I think their views are becoming more of the process, this is a hot potato at the moment. I hope that it does not take away from being child centred enough though, we really need to think about where the child is because I have seen so many forums when you are dealing with needy people, and it is actually really hard to separate oneself from that to consider a child's best interest.

(Panel Member)

There is a slight worry that I have about concentration, and how the pendulum is swinging back to the parent's right and you can lose sight of the child's rights in that.

(Panel Member)

Unlike the UN Convention, the ECHR is enforceable in UK domestic law<sup>79</sup>. The Human Rights Act 1998 requires that all new legislation and judicial and administrative procedures must be ECHR compatible. Moreover, any decision of a UK court can be challenged under the ECHR at the European Court and UK courts must now consider any relevant decisions of the European court in making judgements here. As such, the European court is

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<sup>78</sup> At present, neither children nor parents attend Adoption Panels in this local authority. The reasons for this are discussed in detail in a later section of this chapter.

<sup>79</sup> As discussed in more detail in Chapter 4: Legal Chapter, when countries sign up to and ratify the UN Convention they are obliged to bring domestic law, policy and practice in line with its Articles. However, its enforcement mechanisms are considerably weaker than those to the ECHR.

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a considerable force which appears to be becoming increasingly influential in the UK. However, some members of the adoption panel questioned the benefits of the ECHR for children and viewed it as something which favoured the interests of parents. As one participant identified, recommendations of the Adoption Panel that may be made not solely based on the best interests of the child, but rather based on what may be 'challenged' in court by those representing the parent.

You then become much more aware of the need to be looking at the sorts of things that are being challenged in court, and of course the extra-contributing factor of the ECHR and that has become an issue that is used by some parents' solicitors.

(panel member)

Another participant agrees with the emerging influence of the ECHR, but argues it should not replace neither what is considered to be good practice nor the need for external accountability to local authority decision making processes.

The recommendation you make can end up in court and because I think we are beginning to be concerned about ECHR, but I think we people are reckoning that if you are arguing on the basis of good practice and you have done your work and you are arguing for the best interest of the child. ECHR, yes will raise issues but you should be able to argue your viewpoint if you have done your work properly. That is what you should be doing anyway, so I think it is an extra challenge, but to me it is not the key one because all these recommendations that we are making should be open to scrutiny and challenge on the balance the rights.

(External Advisor to the Adoption Panel)

In the discussions about the ECHR, one of the key themes which emerged throughout this study was related to the inherent dilemma in policy as to how children's rights are balanced with those of adults, namely their parents

or carers. For example the ECHR contains standard provisions on the freedom of expression<sup>80</sup>, but makes no special reference to children in this regard. Although the UN Convention reflects the importance of consulting with and involving children, this provision is not made explicit in the ECHR (Kilkelly 1999). As such, it is possible that children may not always share the same degree of legal protection of their participation rights that adults do under the ECHR (Kilkelly 2000). This has implications for adoption panel members who are being asked to make recommendations on permanency. As the external member identifies below, the adoption panel struggles with balancing the rights of both the parents and the child.

However, it is the parents who can challenge issues through their legal team in court whereas the child is less likely to be given this opportunity<sup>81</sup>. In the respect of this present study, none of the participating children were independently legally represented during the permanency proceedings nor did any challenge the outcomes of these proceedings. One participant described how despite the positive developments achieved through rights based legislation; it has led to more legal challenges of decisions by birth parents.

I think that far more things are becoming contentious at court and the day to day court and more questions raised – have you done enough? [Referring to have sufficient attempts been made to restore the child with their birth family].

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<sup>80</sup> ECHR, Article 6

<sup>81</sup> A child under the age of 16 may instruct a solicitor in civil proceedings. The Age of Legal Capacity (Scotland) Act 1991 was amended by the 1995 Act and read “(4a) A person under the age of 16 years shall have legal capacity to instruct a solicitor, in connection with any civil matter, where that person has a general understanding of what it means to do so; and without prejudice to the generality of this sub-section, a person of 12 years of age or more shall be presumed to be of sufficient age and maturity to have such understanding.

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Because there are conflicting rights in this between the birth family and the child and the job of the panel is that you have to look at it from the best interest of the child, and this can be challenged in court and we know that very often it will be argued by their legal team, and they have got rights.

(External panel member)

In the local authority in this present study, neither children nor their birth parents attend adoption panels. This is not specified in either legislation or policy (as discussed earlier). It is a decision left to local authorities. The adoption panel was described by most of the participants in phase two, as a professional body - intended for professionals to come together and openly discuss case management decisions and as such was not considered an appropriate forum for either children or their birth parents. However, several participants identified a need for the local authority to re-consider its position on this in light of the increasingly influential rights in ECHR and the Human Rights Act 1998, alongside the emphasis placed on working in partnership with parents – particularly since they are included in other relevant forums such as child protection conferences and children's hearings. Two participants described how this has been an area where there has been considerable disagreement amongst professionals.

I think birth parents should be there. I have come from many disagreements with panel chairs about that. Birth parents come to child protection conferences, we involve birth parents in other very difficult decisions that we are making that they most certainly do not always agree with or like, but that is not a reason to not allow them to directly express their view.

(Panel member)

This is something I have had some hot disputes about, about the attendance of for example birth parents at panels and children and so

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on – that has been an area of controversy since I came to this authority.

(Panel Member)

### **Scottish child care law into practice**

All eight of the participants in this phase, identified the 1995 Act as being the key piece of national legislation that directly impacts on the practice of the adoption panel. Two participants also identified the Adoption (Scotland) Act 1978 [hereafter the 1978 Act] as also being significant.

To explore the impact of national legislation in greater depth, respondents were asked to identify the key principles of the legislation that impacted on the policies and practice of the adoption panel. Generally, there was agreement that the three overarching principles of the 1995 Act (as discussed above - best interests of the child, no-order principle and views of the child) were significant and directly influenced the policies and practice of the adoption panel. Furthermore all the participants felt that positive shifts have taken place since the introduction of this Act. There is now greater emphasis placed on considering the magnitude of the decisions which the adoption panels are being asked to contribute to and the exposure to scrutiny that the 1995 Act offers.

Yes, because the guiding principles [of the 1995 Act], you know for instance the welfare of the child, the views of the child, I think that has certainly had an impact as we address that issue 'is that right' and I think that ... yes that has impacted in the way that panels are managing their business and that is not to say before the Act was introduced, but we still did think about these things,, but I suppose we now articulate it much more and also I suppose there is a lot more scrutiny now.

(Panel Members)



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Both the above panel members and the one below acknowledge that previously attention was given to the key principles, which are now enshrined in the 1995 Act, but they have become a more transparent part of the process. As one participant described:

Yes, because the guiding principles, you know for instance the welfare of the child, the views of the child...I think that has certainly had an enormous impact as we address the issue 'is this right' and I think it has impacted the way that panels are managing their business and that is not to say before the Act was introduced, but we still did think about those things, but I suppose we articulate it much more now and also I suppose there is a lot more scrutiny now.

(Panel member)

### **Local Policy**

I am not aware of any such policies [when asked about permanency planning policies].

(Panel Member)

They [local authority policy] are pretty out of date.

(Service Manager)

Despite the local authority's (in the present study) policy on permanency planning reflecting the core principles of the 1995 Act (see table 5.1), when members of the Adoption Panel were asked about the existence of such a policy, responses ranged from total lack of awareness of it, to acknowledging its existence, although conceding that it is neither contemporaneous nor is it consistently applied in practice. One panel member's response suggests that there are different approaches to permanency planning within this local authority and states the reason for this is that there are not clear policies on permanency planning which are parts of the work discourse. This panel member believes it has resulted in disagreements and inconsistent practice, subsequently impacting on the quality of service to the looked after children.

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It [permanency planning policy] is not made explicit enough, so people, some people work to one set of expectations and other others work to a different one and there will be tensions between them in terms of what should happen.

(Panel Member)

### ***Guiding Principles of the local policy***

All eight of the participants agreed that the foremost guiding principle of policy and practice was to ensure that when a child becomes accommodated<sup>82</sup>, there is a clear plan to work towards rehabilitation within their birth family. If it was not going to be possible to return a child to his/her birth family, this should be identified early and alternative, long-term plans should be secured as soon as possible. This approach is consistent with one of the key principles of the legislation, the regulation and guidance that accompany it and the Local Authority's Adoption and Permanency policy in this present study. As detailed in Chapter 4 (Legal Framework), the Children (Scotland) Act 1995 has a 'no order' principle, which also applies when considering routes to permanency. No 'order', for example a Parental Responsibilities Order or an Adoption Order, will be recommended or made unless it is shown to be better for the child than if the order was not made. The local authority (in this present study) policy on permanency and adoption states that *'every effort will be made to enable a child to grow up within their family network or with other adults with whom they have an attachment, where this is consistent with safeguarding and promoting their welfare.'* Consistent with the intended approach in the policy, participants described the role of the Adoption panel as a body which:

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<sup>82</sup> Accommodated refers to a child who is both looked after by the local authority and placed outside the birth family with either foster carers or residential care.

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Considers whether or not rehabilitation has been explored....but certainly the policy is first and foremost is to ensure that all alternatives have been explored.

(Panel Member)

Where ever possible, we should be trying to find community based solutions for children, but where that is not possible, depending on the age of the child, we should be looking to provide a secure family substitute base for that child, provide stability, security and consistency throughout the child life and that is based on the paramount aspects of the legislation.

(Panel Member)

I understand the council's responsibility to be generally speaking that children who are accommodated should be got home as soon as possible if it is feasible and if they are not going to be going home, they should be brought into as neat a situation as possible.

(Panel Member)

### ***Timescales and avoiding 'drift'***

The Adoption and Permanency Policy of the local authority in this present study refers to avoiding 'drift' when developing permanency plans for children. Drift is a term which has been coined to refer to periods of time where a looked after child's future plan is not yet secure (Rowe and Lambert 1973; and Monck et al 2003). For example, a child may be living with foster carers – but it is not yet clear if there are to remain accommodated or if they will be moving back with their birth families or on to adoption or long-term foster care. The potentially damaging consequences of drift on looked after children have been well documented (Rowe and Lambert 1973; Schofield et al 2000; Munro 2001; and Monck et al 2003). Yet it would appear from this present study that 'drift' continues to feature in the lives of looked after children requiring permanency, despite local policy and the good intentions of professionals.

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Timescales were described by the professionals in this present study, as set periods of time allocated to a case as it moves through the looked after system. For example, the time between when a child is first received into care to when his/her first looked after care meeting occurs. Volume 2 (Children Looked After by Local Authorities) of the Regulations and Guidance for the Children (Scotland) Act 1995 states that a looked after care meeting must occur within three months of a child being in accommodated (The Scottish Office 1997). However, no such explicit timescales exist in relation to when discussions and decisions about a child's permanency plan commence or indeed when a case might be referred to an Adoption Panel; the result of which is inconsistencies in practice and different degrees of priority being attached to permanency planning for looked after children within the local authority in this present study.

Whether it is explicit, I am that sure that it is [timelines for permanency planning in policy] I can't remember it, once the child care review has made the decision that the case should go to the adoption panel for registration, I am sure is an indication that would happen within 3 to 6 months. In practice it is not clear, in practice you are very much dependant on a worker and a senior worker accepting that as a priority for the work that they are doing and you do sometimes have cases where in your first look through the papers, you will be saying why on earth did it take so long to get there [Adoption Panel], you are left with the dilemma ...do you say 'although there are some gaps here...I know enough here to say this child should go for permanency?' I spoke earlier about the need for these things to be more explicit in the department and I really do believe that because I don't think it is acceptable and that there is such wide variation in practice...that does concern me.

(Panel Member)

This concern was confirmed by another panel member who also spoke about discrepancies in practice when he described how a case is not referred to an

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adoption panel until those responsible for that case make that decision. It would appear that in this present study different principles apply to different social workers and managers – resulting in inconsistent practice:

There is no, as far as I am aware, there is no threshold beyond which people say this child must be referred to a panel [adoption panel], it is very much a case of a decision being made by the managers of the case, by the social worker and their immediate supervisor as to when a referral needs to be made for permanency planning. I think one of the difficulties is that there isn't a lot of consistency about that, that people have different views about how far a situation can go before we need to intervene in that way, some social workers give more leeway than others...certainly here we [adoption panel] are more inclined to work to a short timescale.

(Panel Member)

In discussing timescales, members of the Adoption Panel most often cited the well-known research conducted by Rowe and Lambert in the early 1970s. That research found that children who had been separated from their birth families for more than six months were less likely to be successfully re-integrated home. As such, Rowe's research advocates that early and decisive decisions were taken for children who are separated from their birth families – within the first six months of the child being in care. Some participants described this research as being the 'timescale' that they work towards. However as the second participant below describes, some professionals in the local authority in this present study do not take this approach, and consider that greater flexibility is needed in permanency planning. Once again, confirming that different approaches are applied to permanency planning within the local authority in this present study.

Not timelines as such, but our policies do refer to some of the research that has been done by Jane Rowe...you know 6 months in



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care and the complications of breaking the bond between the child and parent and if it goes beyond that, that cut off point, it is very difficult to rehabilitate the child back home.

(Panel Member)

We tend to think in terms of 6 months, if this child is not going to get home within 6 months or, if, there is no likelihood of the situation improving after that, then we would be thinking of permanency planning.... But some people think that is too short. So I think there is a real lack of consistency in the department about what the threshold is.

(Panel Member)

Having said this, it was acknowledged by members of the adoption panel that they have no control over the time it actually takes to get a case referred to a panel. Moreover, it is most often well beyond the six month threshold referred to above. Many recalled cases that took too long to come before a panel and often they hear of cases where children are in 'drift'. One of the reasons given for this was the administrative task of organising panels. Furthermore, as the final quote below suggests one of the primary reasons for delays is the workload pressures of the allocated social workers, despite a clear recognition that delay is not in children's interest – the reality is that it is happening in the local authority in this present study – particularly in permanency planning:

I think there should be timelines, it should be very, very clear in the same way that it is after an adoption panel...prior to the adoption panels, there are not timelines and I believe this is a problem, children languish in care, there is a lot of drift up to that point and that is not really acceptable.

(Panel Member)

In my mind there has to be sliding timescales, you can say that children can wait... it may be that older children can wait longer than younger children, you know so, if you like we have to make

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decisions in much shorter periods of time where infants or very young children are concerned because we know the life long effect of not making decisions has upon them.

(Panel Member)

No, I am not convinced it is happening all the time, and I think what happens is that decisions are taken at looked after children reviews and because of the pressures of work, the staffing issues...and a whole host of extraneous problems those decision are not necessarily being translated into action in terms of a referral the Adoption and Permanent Care panel as quickly as perhaps they should...I am conscience that that practice team workers are under so much pressure that there are large delays sometimes and from my detached position, I feel that is highly regrettable.

(Senior professional)

### *Role of the Children's Hearing System in permanency planning*

The Children's Hearing System was identified as both being a facilitator of and in some cases an obstacle to effective permanency planning. As the Chapter Four (Legal Framework) outlines, if the adoption panel recommend the local authority apply for a Parental Responsibilities Order on behalf of a child, it must first be approved by the agency decision maker and once this has happened – if the child was already looked after – the case must be referred to a children's hearing for advice to the Sheriff court<sup>83</sup>. Here the professionals recounted scenarios where the adoption panel are working towards one plan for a child and the children's panel suggests otherwise. This issue is cited as a particular issue in phase five of this study; when speaking to the decision makers. It is discussed in greater depth in Chapter Seven (Decision Makers).

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<sup>83</sup> The 1995 Act s. 73 (4) A relevant local authority shall refer the case of a child who is subject to a supervision requirement to the Principle Reporter where they are satisfied that - c. the best interests of the child would be served by there (i) applying under section 86 of this Act for a parental responsibilities order

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Obviously there are three concurrent planning systems, there is the adoption panel, there is the looked after children review and there is the children's hearing...now when all three things are working well and things are all going in the same direction...but sometimes, they don't necessarily go in the same direction.

(Panel Member)

### *Involvement of the child in the permanency planning process*

All eight of the participants in this phase agreed in principle that children should participate throughout the permanency planning process. They acknowledged that there have been significant shifts in recent years resulting in more emphasis being placed on professionals to obtain the views of children and young people, as the legal advisor to the panel explains:

Everyone is more aware of taking into account the views of the child, social work departments are obliged to do it, and my impression is that they do it, they hear the child, and they listen to the child.

(Legal Advisor to the Adoption Panel)

However, in unpacking this further, a range of views emerged on the extent to which children should participate in permanency planning ('participation' is defined as being involved in the process as discussed in Chapter Three (Literature review), the actual degrees of children's participation from the perspectives of members of the adoption panel and indeed about the mechanisms in place for facilitating children's participation in permanency planning at the local authority in this present study.

### *Age and stage of the child*

The age, stage and developmental progress of the child were most often cited as being central to determining the extent of the child's participation in decision making. However, when asked to define what was meant by age

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and what age related benchmarks inform a child's involvement, professionals were less sure and consistent in their responses.

The crucial thing has to be age.

(Panel Member)

Depends very much on the age of the child, how articulate they are and how comfortable they are.

(Panel Member)

There were two predominant areas where a child's age emerged as being a key factor in determining the extent to which they were invited to participate. First, what information a child should receive about their circumstances, the permanency planning process and the degree to which this information should be censored before it reaches the child. Secondly, whether or not a child should be present at meetings where their permanency plans were being discussed. The adoption panel members commented predominantly about the actual Adoption Panel, but they did make mention of other forums such as the looked after children care reviews and children's hearings [both of which have a role in the permanency planning process as discussed in Chapter Four (Legal framework)].

The professionals were very clear that the intent of the legislation was to encourage the active involvement of children, but acknowledged that *caution* – on the part of the professionals is often exercised when determining what information children actually receive, which would in turn facilitate any meaningful involvement on their part. Despite a 'good will' to support children in being involved in decision making, this group admit that it is not done without considerable qualifications – related not only to the child's age (i.e. the younger he or she is are the less likely he or she is to receive

information), but also the adult responsibility to 'protect' the children's well-being. For example, there is a concern that children may be given mixed messages about their future. Children could be getting one scenario from their birth family and another from their social workers and where there is disagreement about this plan, it could be harmful to the child. As such, it would appear from this present study that there children are not always receiving all the relevant information and what they do received may be censored. Both of which impedes a child's ability to be meaningfully involved.

My view is yes...as much as possible [be involved in permanency decision making] given their age and stage. It is an interesting one in that the legislation and regulations if you look at and you look at the new standards that are out, it says very clearly that children should be involved in the process of planning their future as much as possible depending on their age and stage and to me that would mean information to the panel [the adoption panel], particularly Form E's – should include the views of the child, you should have some indication of the views of the child. The reality is that people are kind of wary about how much you say to children about what the options are that the panel faces... because they know that the birth parents may not agree and that still have contact, they could be saying other things and people feel uncertain. People get anxious about this.

(Panel Member)

### *Children's attendance at adoption panels*

As noted earlier, children and young people do not attend adoption panels at the Local Authority in this present study. The participants in this phase were asked for their views on this and the responses yielded a range of differing responses – from those who felt they should be present to those who agreed



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that they should 'participate' on some levels, but questioned if this actually meant attending adoption panels:

I think the child should participate wherever possible, but whether that means going to an actual panel, I am not entirely convinced.

(Panel Member)

I think that all children should participate actively, you know for instance an older child coming to an adoption pane...we must allow participation in some form and we must actively encourage them to be involved in a decision making process.

(Panel Member)

I have been at panels where the carers are present and have discovered afterwards that the child was in the waiting room and I thought what a shame we did not invite the child in.

(Panel Member)

One participant reported that he would not feel comfortable with children and young people being present at adoption panels. In saying this, he emphasised the importance of the period of planning leading up to the adoption panel and the need for children's involvement in those stages. His rationale for this was not about excluding the child (or parent) from the entire process, rather it was about the adoption panel being a '*professional forum*' and '*not an appropriate setting*' for children and families. He felt strongly that social workers needed access to such forums where they could come and openly and frankly discuss case management decisions.

I would not feel comfortable about a child attending a panel; I think it would be inappropriate and similarly with the child's parents. I think it would be better to involve them in the process leading up to the panel; rather than them actually attending.

(Panel Member)

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Similar to the earlier discussion on information given the children, the age of the child was most often identified as being the factor that should factor in any determination of whether or not a child should attend an Adoption Panel. The younger the child, the less likely the panel members felt it would benefit him/her to be present. But as children approach 12 years of age, they were considered more likely to be able to participate in a meeting. One panel member recalled a case of a 12 year old boy, where she thought it may actually helped him if he had been present:

The age of the child, the child would have benefited from being there and probably could have participated.

(Panel Member)

Another panel member felt that if a child understood then perhaps he/she should attend adoption panels, but those who do not understand should not attend. Moreover these two professionals emphasise that the recommendations of the adoption panel are not for the to child make, rather it is for local authority. At the same time, however, panel members were saying that children's views and wishes should be fed into this process – whether this means they should actually attend meetings is less clear.

I don't think all children should go, I think where children have an understanding, they should have direct involvement, you can argue...well it is not their decision, but I think they should have direct involvement; they have involvement in other decisions.

(Panel Member)

I do think as far as possible we should be listening to what children say and be encouraging them to have views about what's to happen to them... of course their views may not be what people think is right for them, but I think it has to be acknowledged.

(Panel Member)

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As discussed earlier, there are other meetings leading up to the Adoption panel that children as a general rule normally always attend; they are the looked after care reviews [hereafter LAC reviews] and children's panels.<sup>84</sup> However, as noted above children and young people at the local authority in this present study do not attend their adoption panels. In exploring this further, two key themes emerged to explain why children do not attend the adoption panels. First, the actual structure of the panel meetings was described as being 'adult-focused' and as such, not conducive to inviting children's involvement. For example, the meetings take place during the day when children are supposed to be at school and the room was filled with adult who are mostly strangers to the child. Secondly, there was strong sense from the professionals of their 'adult' responsibility to protect children from hearing potentially harmful information about their families.

There was agreement amongst all eight professionals that the current format and set up of the adoption panels was not conducive to encouraging children's involvement. Some of the reasons cited for this included: the length of the meeting, they are conducted as 'formal' meetings and it was felt that children would not enjoy this experience or would find the experience uncomfortable.

They can be quite formal and is it really the right forum to be bringing children to?

(Panel Member)

I can't see it being an easy experience for any child under the age of 12...I think it is quite daunting actually.

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<sup>84</sup> Children have the right to attend both their LAC reviews and children's panels. In the case of children's panels – they have a duty to attend, unless they have been excused from doing so.

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(Panel Member)

Sometimes it can take up to a hour and a half and I think it is unrealistic to expect children to sit through the length of the meeting.

(Panel Member)

I believe it is too adult a forum, it is business for adults I believe, but I still think that somewhere along the line, it is important that the child's views are put forward.

(Panel Member)

Adoption panels were described as being potentially intimidating for children and as such, panel members felt that there are other ways for children to participate in the decision making processes, outside the actual panel meetings. Here some panel members stress the need to involve children, but that this should occur outside 'formal' adult meetings.

Participation in determining what is happening to a particular child can happen in different ways and not necessarily involve having to go to a panel [adoption panel], because I think panel meetings can be a bit intimidating.

(Panel Member)

You can't ignore the dynamics of the process and how we are currently organised. I think we should tread very carefully if we are thinking of exposing children to that process. I am not saying they should not be involved, I am not saying that it is not important that we get their views, but there are ways of doing that, they may not mean physical presence at a meeting.

(Panel Member)

From this discussion, it would appear that there was a strong sense of a need to protect children from what could be a harmful experience – both in terms of how the panel meetings are carried out and from the details about their life that will be discussed at these meetings.

I think we are probably protecting them, you know it is an ordeal...and is it really the right forum to bring children to?

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(Panel Member)

Two of the eight professionals felt the local authority in this present study should give serious consideration to children attending adoption panels. But in saying this, they acknowledges that careful attention would need to be given to how they as panel members conduct themselves during the meetings (i.e. how they explain to the child who they are in the context of the child's life) and secondly, they must question if they as a panel will be prepared to take seriously what the child says – in other words what influence (if any) would the child's views have upon the decision making and the recommendation of the panel?

None the less they know the panel is taking place, so maybe we should be thinking seriously about letting them come, so to remove the mystique about these strange people making decisions about me... I think it is something we really need to think very seriously about and try to get right...I think overall children should be able to meet us and should have that opportunity in decision making.

(Panel member)

You have to be very careful about how we put who we are, why we have the child there, whether we are actually going to listen to what the child says seriously, we have to commit that we are, otherwise you know for what purpose is that, for what purpose are we doing this?

(Panel Member)

One professional offered a slightly different slant on the argument where he wondered about the actual output of the meeting and if by having the child present would a better decision would be made? Equally, he wondered what difference it would make to the child if they had felt more included in the processes leading to their permanent plan. Clearly a hard factor to measure,



but when we hear from the children in Chapter 6 (Children's voices), further insight is gained on this important point.

I am not convinced that if we make the children present; would it actually help the correct decision to be made or would it help the child in the long term that they had an impact on that system?

(Panel Member)

### **Information shared with children**

#### ***Uncertainty and limitations of information***

The professionals appeared to struggle with what information should be shared with children about their permanency plans. The most pronounced example of this was in relation to sharing information about plans or details that have yet to be confirmed. For example, panel members described grappling with how you tell a child they are going to move to a permanent foster home when they do not know who this family will be. How do you give children a sense of permanency and effectively involve them in that decision making process, if that plan it is yet to be confirmed? It would appear that there is an apparent uncertainty in securing permanent foster homes and plans for children and this has implications for what information can be shared with children to facilitate their participation in the decision making process. Most often, participants cited lack of resources as a constraint on what information they share with children about their permanency plans. Panel members clearly struggle with the dilemma of what is worse – disappointing the child or giving them false hope versus not sharing any information with them in ways that restrict children's active participation in the decision making process.

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Do you give children information about 'this is what we are planning for you, but we are not sure if that is sustainable?' If you cannot complete that plan, does it confuse children more? So I think very often workers are struggling to know what to do...what is realistic to ask a child of 4,5,6,7,8,9 about options and how well do we do it and what options do we give them. I think it is a difficult one when you get the school age children because if you are thinking you will be getting a family for this child who is eight, do we get into a discussion with them where we want adoption...that would be our choice but if you are not sure if you are going to get this for them, is this going to disappoint them, you do get involved in these issues and but then in that case do you on the other hand...you have other children where are options are not opened up to them and they are not even given the chance to even think about it because it has not been presented to them.

(Panel member)

It is evident that the panel members value the rights of children to have their views heard in the decision making around the permanency plan. However as noted above this was not without some qualifications based on the child's age and stage of development, as well as clear struggles with how this is balanced with 'protecting' children from possible disappointment and dealing with the realities of limited choices of permanent foster carers. Given this and the fact that children do not currently attend adoption panels, it was important to explore how the professional felt the views of looked after children are brought to adoption panels; was this sufficient and lastly how influential were they to the actual recommendations.

### ***Voice of the child at adoption panel meetings***

All eight of the panel members identified the child's allocated social worker as being the primary vehicle for bringing the child's views and wishes to the adoption panels. The child's allocated social worker prepares the majority of

the paperwork<sup>85</sup> for the panel members to consider in advance of the meeting. At the meeting itself, the allocated social worker attends and is most often accompanied by their senior social worker. The panel members ask questions of the allocated social worker and their senior based on the reports and the agenda, both of which contain sections that seek to establish the views and wishes of the child.

### **Mistrust of the 'views and wishes' by panel members**

There was a certain level of scepticism and mistrust amongst the panel members that they were genuinely hearing the views of the child from their social worker and that often what they were hearing was an 'opinion' of how the child was doing versus a sense of their views and wishes about the permanent plan being considered. This point is expanded later by the allocated social workers themselves [(in phase IV of data collection and reflected in Chapter 7 (Decision Makers)] when they discussed how difficult and challenging it is for them to ensure that they are gathering a complete picture of the child's views for presentation at various forums – including the Adoption Panels. As one panel member described:

It's the social workers perspective, the social worker brings the information and likewise the views of the child, we don't even get a letter from the parent to the panel to say, even a dictated later and likewise for a child. I have certainly been on a panel where a social worker said ...this little girl told me to tell you this...but that doesn't happen very often, so I feel it is the social worker's views we are hearing.

(Panel Member)

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<sup>85</sup> The social worker is required to fill out a Form E. As well, a medical report is also submitted to the adoption panel, which is based on an assessment conducted by a Paediatrician who is also a member of the adoption panel.

### *Skill and training of social workers*

Panel members raised the variance in the skills and training of social workers and how some have more than others. One panel member described how this directly impacts a social worker's ability to elicit the views and wishes of the child and in turn, accurately represent these views and wishes to the adoption panel.

I think it very much depends on the skills of the social worker, I think some are very good, and some you know workers...social workers have skills in different areas and some are clearly very good at understanding the inner thoughts of children, where the child is at...and some are not as good at it...I think it varies.

(Panel Member)

Another panel member made a similar point and doing so made two further points. First, he questioned the level of training that social workers receive particularly in relation to effective communication with children and secondly, he described how social workers are more naturally able to elicit children's views than others.

I think that we have got to find better ways of working with children to make that real for them and to deal with that. My own experience of people coming to panels is I don't think in the initial training of panel members they get really anything on working with children and to me working with children not about sitting talking to children, you have got to do a lot more than that and I have met some extremely good social workers who are very good at working with children, but I also think there are others who find it harder to find imaginative ways to work with children.

(Panel Member)

### *Priority of child protection over permanency planning*

Permanency planning was described by the panel members as an area of practice that receives less overall priority when compared to child protection

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(i.e. child abuse investigations). Below, a panel member suggests how permanency planning is given less attention in the overall work with looked after children at the local authority in this present study. The consequence of this is that social workers receive little training and/or support in their attempts to carry out good permanency planning practice, which would include working directly with children.

I think my impression has been over the years...there has been enormous emphasis placed on child protection, child protection procedures, child protection training, um...and a lot of resources have gone into child protection and a lot of the focus on the practice teams is on child protection, but then it kind of stumbles a bit. I think it [permanency planning] needs a higher profile, resources, workers need training and they need to be supported in what they are doing. I think child protection is very stressful and that is always acknowledged ... but I think this is stressful as well, when you are looking at long-term plans for children. So people do need to feel supported in what they are doing...um they do get support from their supervisors, but I think it could be better.

(Panel member)

This section raised three key issues which appear to impact on how children are involved in permanency planning the local authority in this present study. First, there is a range of skill amongst social workers with some being more able than others to carry out direct work with children. Secondly, but not unrelated, social workers have limited access to training on working directly with children and permanency planning and thirdly, there is a sense that permanency planning in the local authority in this present study is not given the same degree of priority as is child protection -particularly in relation to planning and allocation of staff time, training and support to staff. As the panel members identified earlier, they rely on social workers to bring forward the views and wishes of the children to the panel meetings,



however, they admit to sometimes mistrusting the validity of these accounts. This mistrust appears to relate to these three issues highlighted here.

## **Phase Five**

### ***File review – the views and wishes of the child***

As stated earlier, all the professionals felt it was important that the adoption panel heard the views and wishes of the child. However, as discussed earlier children do not currently attend the panel meetings and the primary vehicle through which the views and wishes of children are heard is through their allocated social worker. This is done both verbally at the meeting and through Form E's, which are completed prior to the meeting and reviewed by the panel members to inform their thinking about the case before the meeting takes place. Form E's are forms created by the British Association of Adoption and Fostering [hereafter referred to as BAAF] and they are used by local authorities across Scotland. The Form E is a standardised form used for the collection and presentation of data about children needing permanent foster or adoptive family placements (BAAF 1996).

As explained in Chapter 3(Methodology), phase five of this study involved a review of the forms Es of twenty-one children from the local authority in this present study. The analysis from this review was placed in this chapter as it complements the earlier discussion on what information panel members feel they have regarding the views and wishes of children and how much of it actually comes from what is captured in the Form E's. What this section reveals confirms much of what the professionals in phase two said. First, that there is considerable variance not only in what they receive verbally, but in what they receive in writing about the child's views and wishes. It ranges

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from nothing at all to descriptions of how the child is doing in their current placement to a letter written by the child stating in their own words their views and wishes. Moreover, what they did receive was most often based on the stated opinion of the child's allocated social worker or carer –versus directly from the child. Secondly, as referred to earlier the panel members questioned how much information children had about their permanency plans and how this was sometimes censored or limited based both on the child's age and/or the lack of a clear plan or resource about which to tell the child – details taken from the Form E's confirm and support these conclusions. As well, there were instances where details was not always shared with children about their permanent plan because of an adult sense of needing to protect them from what was considered by the adults to be potentially harmful – for example cases where the decision was to move towards permanency but because there was no permanent resource identified (i.e. permanent foster carers); the child was not yet told.

The Form E has three sections which specifically ask for details on the child's views and wishes and these are:

- Profile of the child and his/her needs - in this section the social worker is asked to provide a description of the child and this should include the child's wishes and feelings in respect of what type of family will best meet his or her needs [section 8].
- Plan for the child – this section has 4 parts which directly ask for the child's views and these include: (i) child's wishes and feelings about the placement plan in light of his/her understanding; (ii) date child received written information about the plan; (iii) has the child been

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counselled regarding his/her future; and (iv) does the child have any views about their religious or cultural upbringing [section 11].

- Checklist for additional information – this can include a child's written submission or verbal submission on his/her views about the proposed placement and/or adoption [section 12].

At the end of the Form E there are spaces for signatures of the allocated social worker, the senior social worker, the child's birth mother and father and the child. One of the professionals interviewed in phase 2 recalled how she has certainly never seen a child's signature (nor those of a birth mother or father) on this form and to her knowledge children are not given them in this local authority – which was later confirmed in the interviews with the allocated social workers. Consequently, none of the 21 files reviewed for this study had a child's or their birth families signature on the Form E's – despite the form having space for this. According to BAAF, the decision to obtain signatures is a local authority decision, but it is considered good practice as it would engage children and their birth families in the planning process.

The first section of the Form E where a child's views and wishes are invited is 'profile of the child'. Within this section, the social worker is invited to comments on the child's views and wishes of their current situation. Of the twenty-one forms reviewed, nine made direct reference to the child's views and wishes and twelve made limited or no reference to the child's views and wishes. Where the child's views and wishes were referred to, they tended to be descriptive in nature versus telling the reader what the child actually thought. For example, a 12 year old male was described in this section as worrying about his mother, but as generally accepting of his life as a looked

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after and accommodated child. Others indicated that child was 'aware' of the plan for their care versus what they actually thought of that plan or indeed how their views and wishes may have been taken into account in how the plan was developed. For example,

Tommy is aware that going to his mother may not be possible.

(10 year old male)

She is aware of the plan, but she would rather be with her parents, but she understands this may not be possible and she appears accepting of the fact that we are looking for a forever family for her.

(12 year old female)

He is very much looking forward to moving on a long-term foster placement.

(11 year old male)

Another file described how it has been challenging to involve the child because of her loyalty to her family and as a result of the messages she has been receiving from members of her birth family. Her worker identifies this as a significant factor which has been a barrier for encouraging this child's active involvement in the decision making,

She is very loyal to her family and she is careful not to divulge any secrets. She has been told to be circumspect about telling social workers anything.

(8 year old female)

One file in particular expressed the child's views, but in doing this disregarded it based on the professional view of what would be in this child's best interest and what they really want.

She expressed her wish to spend weekends with her mother, it is felt however, that she is desperate to be loved and claimed by her family and she holds onto that fantasy of returning to her mother's care.

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The second section which asks for the child's views and wishes is titled the Plan for the child and as listed above it covers more area than the previous section. Consequently it tended to contain more detail about the child and their views and wishes about their permanency plans. However, what was notable here was the number of cases where children have yet to be made fully aware of the plan – suggesting that to date they have not have extensive involvement in the development of their permanency plan. The form asks if the child has received any written information about their permanency plan – seventeen of the twenty one children had not. In the cases of the other four children, their social worker indicated the child had received verbal updates on the plan during each of their contacts. Only thirteen of the twenty-one children had been counselled regarding their permanency plan and most often, this was done by their allocated social worker. Only four children stated a view on their religious and cultural upbringing.

Accordingly, the Form E's, when asked what they really wanted, thirteen of the twenty-one children said that they would like to be with their birth families and not live in care. It reminds us that more often than not, looked after children – regardless of the home situations that they have come from have a strong desire to be with their birth families – further emphasising the complex task of ensuring the active and meaningful engagement and involvement in the development of a permanency plans – away from their birth family.

She states clearly that she would want to return to the care of her mother, she does not understand why this is not possible and finds it difficult to accept this situation.

(11 year old female)



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When formally asked, he replies that he wants to return to the care of his mother.

(10 year old male)

She is aware of the local authority plans, whilst she would rather remain within her family, she appears to understand why this is no longer possible.

(11 year old female)

While the children have stated that they would like to return their parents care, they are aware that past home circumstances and ongoing present problems and they are not wishing to return to these.

(9 year old female)

The case of a nine year old boy further depicts how it can be challenging to balance what may appear to be in a child's interest with what they wish for and what they articulate when they are asked. Moreover, it raises issues about what level of detail is shared with a child to help them understand why a particular plan is being suggested; even if this means suggesting negative things about their families.

He states clearly that he wishes to return to the care of his parents....He appears settled in his placement, but he does not accept that his mother is not able to care for him.

(9 year old male)

During this section there was also evidence of what the panel members referred to as the social worker's views and interpretations, versus the direct views of the child. Although this is entirely valid and the allocated social worker should have a sense of how the child is doing, statements such as the one below were not accompanied by evidence to support what was being said.

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I believe he feels some relief that he will not be returning to his mother's care.

(10 year old male)

Whilst all 4 children have expressed a wish to be with their parents, they are aware of the difficulties and prefer the stability and structure from their placements outwith the family home.

(10 year old male – with older siblings)

There were examples of where children had been positively engaged in the process – yet one of these cases also demonstrated how delays happen and how other pressure of work sometimes takes priority over the administrative responsibilities surrounding permanency planning. For example, one child was first referred to the adoption panel when he was aged twelve. At that time, his mother had been suffering significant mental health problems and his return to her full time care was unlikely. Below are a series of quotes taken from the Form E. They also provide a clear example of how a child clearly participated and had their views, wishes and understanding of the permanency planning process reflected in a form E.

Callum has been well able to indicate that he wishes to remain with his current carer and grow up where he has experienced stability and security. He has also made his wish known in respect of ongoing contact with his parent.

And

Callum has been fully involved in all the discussions which have taken place about the progress of his care and the present plan to seek advice from the adoption panel to secure his long-term future.

And

It is Callum's view that he wishes to remain with his current carers as it is clear that he cannot be returned to his parents.

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The recommended plan for Callum was that the local authority applies for a PRO and this was in 2000. In 2001 the case was once again reviewed<sup>86</sup> by the adoption panel and they were advised that the PRO had not yet been applied for because of *'other priorities of the team'*.

There were also examples of where the lack of a clear resource (i.e. foster carers) for a child limited what the social worker felt they could speak to the child about. Here, the social workers, similar to the panel members as discussed earlier, clearly struggle with engaging a child in a process that is uncertain and how this lack of detail may cause greater anxiety for the child. Below is the case of a two siblings who are living with temporary foster carers, but this is not their long-term placement – yet because a long-term resource has not been identified, their social worker evidently struggles with engaging them in an uncertain process.

Because of the uncertainty of when a family will be identified discussion with the girls about their long-term future has been difficult. The girls indicate that they do not wish another move and they want to stay where they are. Discussion about the future has been very difficult to progress.<sup>87</sup>

The Form E contains a section for those cases which are being considered for adoption. This section was rendered not applicable in the twenty-one files reviewed of this study. However, one could argue the questions could and should equally apply to cases being considered for PRO's. The questions are: does the child understand what adoption/freeing or another plan will mean

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<sup>86</sup> If the child remains without an order (as discussed in Chapter 4: Legal Framework) the case is reviewed at 6 month intervals by the adoption panel.

<sup>87</sup> These two girls were both interviewed, as was their allocated social worker – this issue was brought up in all three of these interviews and links are made between them in Chapter 6 & 7 (Children's Voices and Decision Makers).

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for him/her? Does the child understand the legal implications of adoption/freeing?

The final area of the form which specifically refers to the views and wishes of the child allows for written submissions to be made by the child. Only three of the twenty-one children put their wishes and views in writing for the adoption panel. Two children wrote letters to the panel - one indicating his desire to stay with his current carers and the other stating her desire to continue seeing her family, but that she wants to live with a 'mummy and daddy' (not necessarily her birth mother and father) and her birth siblings. If it is not possible to live with her siblings, she wants to continue seeing them. Another child filled out a 'Having your say' form, which asks children a series of questions about their current placement, school and what they want for the future. These forms are typically prepared for the looked after care reviews and children's panels versus the adoption panel. Later discussions with the children will reveal that they like having these forms to fill in and they are a useful tool in helping them prepare for a meeting and in thinking about their views and wishes – raising a question about why something similar is not done for adoption panels.

### **Conclusion**

This chapter reviewed how developments in national and international legislation have had positive impacts on policy. Developments have increased the awareness of children's rights to both protection and participation amongst social work practitioners and other professionals engaged in permanency planning for looked after children. Furthermore, these developments have encouraged debates and discussion on how looked

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after children can and should be more meaningfully involved in the development of their permanency plans. For example, professionals in the present study were clearly wondering if there was a helpful role for children to participate in adoption panels and what they would need to change to facilitate this. However, what also clearly emerges here is a series of contradictions and complications relating to how these two principles are meaningfully translated into local policy and practice. Despite local policy reflecting these principles, professionals in this present study continue to struggle with achieving a balance a child's right to participate in decision making about their long-term well being, alongside their 'adult' responsibility to protect them from current and future harm.

As described, there is a permanency planning policy in this local authority. However, it was described as being out of date and not consistently adhered to – resulting in different permanency planning practices in different social work offices in the same local authority that participated in the present study. This was particularly pronounced during the discussion on timescales, where some professionals felt that stricter timescales for permanency planning should be laid out in policy to reduce 'drift' for looked after children, whilst others felt strict timelines could result in decisions being taken too quickly and would not allow for needed flexibility. The impact on the children and the social work staff of there not being timescales is a theme which emerges again during phases three and four of this study and is explored more in Chapters Six and Seven (Children's Voices and Decision Makers respectively).



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As discussed, children do not currently attend adoption panels in this local authority. For some professionals this was as it should be – as they intended to be adult forums and information discussed at the meetings could be harmful for children to be exposed to. Whereas for others, children attending adoption panels was described as something that should be discussed and explored – particularly in light of the increasing emphasis placed on involving children in decision making processes. Having said this, all the professionals acknowledged that the current set up of the adoption panels was not conducive to inviting children's participation and that change to its structure and format would need to be made.

The professionals on the adoption panel play a significant role in permanency planning for looked after children. They are responsible for making the agency 'recommendation' to the decision maker. Yet, most members remain unconvinced that they are always getting an accurate sense of the child's views and wishes from the allocated social worker and the Form E's during the panel meetings. This conclusion was further supported by the limited level of detail found in the Form E's reviewed in phase five of the present study. In some cases, social workers gave clear indications of what the child thought about the plan and what their wishes and views were; whereas in others, there was little or no reference to the child's views. Moreover, the Form E's suggested that children do not always have all the information about what is being considered for their permanent plan – suggesting they have had little involvement in how it was constructed. Reasons for this included – lack of certainty about resources, lack of time and

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other work priorities and significantly, an over-riding sense of protecting children from what adults think will be harmful information.

In conclusion, it would appear that despite positive changes to legislation and policy advocating the participation of looked after children in permanency planning, achieving this in practice remains a considerable challenge. The experiences reviewed here suggest that social workers and other professionals struggle with achieving a balance between protecting children and facilitating their involvement and that a predominantly protective model and structural constraints interfere with fully engaging looked after children in permanency planning processes. This chapter raises more questions than it does answers and what it reviewed represents only small part of the whole permanency planning process and as such, it is not exhaustive. However, its key findings were used to inform later phases of the present study which involved interviews with looked after children and those whom they identified as being the decision makers in their permanency plans.

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### Children's Voices

#### Introduction

This chapter discusses findings from the third phase of data collection for the present study, which involved a series of interviews with looked after children (see Chapter Three [Methodology] for details on how this was carried out). The central aim of these interviews was to broadly explore the following questions, from the child's perspective:

- Who were the 'key decision makers' involved in the making of his or her permanent plan?
- How does he or she understand the decision making processes that led to permanent plans for looked after children?
- How did that process take place, which lead to his or her permanent plan?
- What input they felt she or he have (and/or) want in the development of his or her permanent plan?

These questions were based on the assumption that the looked after children would have awareness of their permanency plans, yet this proved presumptuous. Although the children in this present study were able to explain that they are 'looked after' and that they live with foster carers (or in one case - residential care), their descriptions and understandings of their permanent plans were less clear. Equally, most were unsure how that 'permanent' or 'long-term'<sup>88</sup> decision had been made. The children's limited awareness of their permanent plans and the decision making processes that determined them, proved a key finding in this present study. This chapter explores how the children's lack of clarity about their plans impacted on

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<sup>88</sup> The children were more able to relate to the term 'long-term' versus 'permanent'.

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their ability to effectively participate in that decision-making process. At the same time as exploring children's permanent plans, useful insight was gained into the level of looked after children's participation in decision making through exploring other related areas of their lives; ranging from what clothes they wear to foster home moves and contact with birth families.

Drawing on various models of participation (discussed in Chapter Three [Literature Review]), what follows is a discussion of themes that emerged from an analysis of the semi-structured interviews that took place with 11 looked after children between the ages of 8 and 16 years. As noted elsewhere, the children interviewed were either subjects of Parental Responsibilities Orders or they have been registered for permanence by the local authority adoption panel. Table 6:1 [Children's sample] below provides a breakdown of the sample.

**Table 6:1 - Children's sample**

<b>Name</b>	<b>Gender</b>	<b>Age on the date of the interview</b>
Paul	Male	8 years
Colin	Male	8 years
Sylvia	Female	8 years
Samantha	Female	9 years
Claire	Female	11 years
Denise	Female	11 years

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Steven	Male	12 years
Abbey	Female	12 years
Catrina	Female	12 years
Mandy	Female	12 years
Bryan	Male	16 years

Fictional names have been used to protect the children's identities (similarly for any foster carers and social workers referred throughout the present study). In addition to the children's direct quotes, there are instances where the interview questions are also included verbatim in the text. When this is done, the question is indicated by *researcher* and the child is identified by his/her *fictional* name. The reason being that in some cases, children gave very short answers and more insight is revealed by the context of the two way transaction that took place between myself (*researcher*) and the child (see Chapter Three [Methodology] for further discussion on conducting research with children).

### *Every day decisions and choices*

The first part of each interview had three objectives. First, it was designed to 'break the ice' between the child, allowing for a comfort level to be developed with both the interview environment and the recording equipment and myself. Secondly, to allow for a shared understanding of what is meant by decisions to be established and thirdly, to identify whom the children saw as being the 'characters' (we called them 'decision makers') in their lives that contributed to key decisions, which directly affected them.



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While achieving these objectives, it was also an opportunity to explore areas of the children's lives where they (the children) felt that they have had some influence on decisions. This is later contrasted with areas of children's lives where they feel they have little or no input; specifically their permanent plans. Visual aids were used to assist with this section of the interview. Children were given three cards, each with one of the following questions written on them:

- i) What school do you go to?
- ii) What music do you listen to? and
- iii) What clothes do you wear?

Children were given a choice of the order in which these questions were explored. They were also encouraged to consider other questions that may be more relevant to their own circumstances, although in the end none chose to do this and only the prepared questions were used. Children were asked to identify whom they saw as being the decision makers involved in making these 'decisions'. Children were given the option to write down the names of, or draw pictures of the 'characters' regarded as being the 'decision makers' in their lives (all but one child chose to write or draw themselves, one child asked me to write the names of those people they gave).

The findings here support those of other studies, which suggest that looked after children, like their counterparts not looked after and accommodated, are given opportunities in their day to day lives to make decisions and voice views on domestic matters (Thomas & O'Kane: 1999); but different experiences emerge as the decisions become more complicated. As

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illustrated in Chapter Three (Literature Review) looked after children are subjected to more complex and often legislated decision making processes. Moreover, they will have more adults (professionals) and outside systems involved in the making of these decisions. Yet, as this next section suggests, when children are aware of choices and process; regardless of how minor the decision may be they are more likely to feel part of the process and be subsequently more contented with its outcome. This present study considers whether this belief can actually be applied to decisions concerning the long-term welfare of looked after children, which traditionally have been made exclusively by adults with responsibility for their well-being. For example, if a child is made aware of how decisions are made about his or her care, will he or she feel more purposefully involved in the process and/or will he or she be more accepting of the outcome? Although a study of this small scale and methodology cannot conclusively determine this, it does offer a qualitative discussion of the issues and dilemmas in effectively involving children in decisions about their well-being and care.

### *What clothes you wear?*

All of the 11 children interviewed felt that they had choice about what clothes they wear. Of these, 8 felt they had complete control over this domain of their life. The remaining 3 children indicated that their foster carer buys their clothes and as such, chooses what they wear. Having said this, these same 3 children did feel they had some opportunity to voice views on what kind of clothes they like. Furthermore, they are happy with it being this way. As Denise, Samantha and Paul respectively relate:

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**Denise:** Well \*\*\*\*\* (foster carer) buys them, but she buys us what we want, sporty stuff and arty stuff.

(Aged 11)

**Samantha:** Well \*\*\*\*\* (foster carer) buys our clothes, but sometimes lets us choose.

(Aged 9)

**Researcher:** Do you ever get to choose your clothes?

**Paul:** No, well only sometimes.

**Researcher:** Are you okay with that?

**Paul:** yea

(Aged 8)

### *What music do you listen to?*

All 11 children reported that they choose what music they listen to, although they acknowledged that this was influenced by what siblings, foster siblings and carers also listen to. Once again, the children expressed that they had some 'choice' and 'say' over this domain of their life. As well, they spoke passionately and animatedly about the role music played in their lives. As Paul and Denise respectively describe:

**Paul:** Oh that is easy, nobody picks but me.

(Aged 8)

**Denise:** Sometimes me and sometimes my sister. Sometimes, I like listening to what Gwen listens to.

**Researcher:** Who is that?

**Denise:** My foster sister, she likes old fashion stuff.

(Aged 11)

### *What school do you go to?*

When discussing what school they attended, in contrast to clothes and music, it was a decision that was more influenced by adults and other outside

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constraints. However, the children were able to articulate an awareness of what these other influences were and how they (adults and other constraints) contributed to any decisions taken regarding which schools they attended. Accordingly, three key factors were present to support the children's participation and ensure they felt involved in this decision. These were: an awareness of processes through which decisions about school are taken; what influenced these, and what choices were available (or not) to them. As the children's responses suggest, although they were not always able to make the 'decision', they did feel consulted and appreciated being made aware of why particular directions were taken. For example, when Colin and Samantha were asked who decided what school they attended, their responses suggested they understood why the decision was taken and what influenced the decision and neither voiced any discontent over the decision that was ultimately taken.

**Colin:** My mum, that's because we lived there and my social worker.  
(Aged 8)

**Researcher:** Can you remember how it was decided that you would go to \*\*\*\*\* school?

**Samantha:** just because it was closest.  
(Aged 9)

An unfortunate issue that faces many looked after children is frequent changes in placement - from home to foster care and between placements (Hill 1999, Schofield et al 2000). Although not the focus of this study, placement changes have obvious implications for which school, looked after children attend and how frequently they might experience changes in schools (Schofield et al 2000). Normally, when any child moves to a new

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area, they also move to the school within that new catchment area. However for looked after children, this could lead to many changes in schools. Efforts are sometimes made to maintain the looked after children in their current school and to only make school changes at a suitable time, if it indeed becomes necessary. In the case of Catrina, she had recently moved to her current placement, which was in a new area, and she was faced with a change in school. Upon reflection, she did not see herself as having any choice of which school she attended. She just went to the one that was closest to her new residence. However, her response suggests two interesting possibilities. Either she did not feel she had a choice and there was no point of thinking otherwise – as such she did not voice a view; or conversely, she really did not mind about the change.

I don't think so, I just went to school, I dinnee really care

(Catrina aged 12)

In contrast, Sylvia (aged 8) described how when first moved to her current placement, she continued to attend her previous school. She then asked if she could change schools to one that was closer to her current home. She saw herself as the architect of that decision. In this instance, despite this child's younger age she felt able to voice her opinion and that although she understood why they maintained her at her previous school; it was not where she wanted to be. When describing why she wanted to change schools, she said:

I wanted to go to that school. That school is nice and when I went to visit it, I met this girl who is nice and who is now my best friend

(Sylvia aged 8)



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Where there was awareness of the reasons for particular decisions, the children showed acceptance and/or contentment with that decision. We must therefore, guard against assuming children do not want to be made aware of choices and restraints. At the very least, be given the chance to be made aware, to voice a view and to be heard. Children, regardless of their age, should be able to have informed input into areas of their lives where they may have conflicting views and desires around having these taken into account – an issue which is explored in greater detail throughout this chapter as the discussion moves into more complex decisions around looked after children's welfare.

### *Children's awareness of their permanent plan*

Questions related to 'permanent plans' were referred to indirectly during the interviews with the children. There were two reasons for this. First, I did not know what the children actually did and did not know about their permanent plans and clearly as an outsider, it was not appropriate for me to advise them of what I had been told by their social worker prior to meeting them (i.e. that they had been registered for permanence and/or that the Local Authority had applied for/obtained a Parental Responsibilities Order). Secondly and significantly, this present study was committed to getting the perspectives and views of the children who participated, as such it was their 'understanding' and 'awareness' of 'their plans' that was of interest, no matter how sophisticated or not that awareness was.

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Only three of the eleven children in this study were able to articulate some understanding that they had been 'registered for permanence'<sup>89</sup> or that the Local Authority had parental rights and responsibilities, in respect of their long term care. Of these three, only one directly identified a Parental Responsibilities Order [hereafter referred to as a PRO]. Consequently, the other children were asked to describe what their 'long-term' plan was. They were asked to describe how they understood their relationship with their social worker and the local authority. This was versus asking them directly if they knew whether or not they had been registered for permanence and what a PRO was for reasons discussed earlier. A worrying trend emerged from the children's responses suggesting that these looked after children had very limited awareness's of their long-term/permanent plan; despite the local authority having 'registered' them for permanence and in some cases completing a PRO. This apparent lack of awareness had obvious implications on the degree to which these children actually participated in the decision making around their permanent plan.

In one of the three aforementioned interviews (where the child expressed some awareness of being registered for permanence), Mandy (aged 12) spontaneously and indirectly brought up her permanent plan, while other areas of her life were being explored. Mandy described how she understood the role that her social worker now plays in her life, when we were discussing whether or not she attends meetings. Her response suggested an

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<sup>89</sup> 'Registered for Permanence' refers to the formal procedure through which a child's case is considered at an Adoption Panel and the recommendation was made they be formally registered for permanence – following which the local authority would secure the child's legal route to permanency (see Chapter 3: Legal Framework for more details)

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awareness of her permanent plan (i.e. that she will not be returning to her birth family) and an understanding that her social worker (in other words, the local authority) now have responsibility for her care as opposed to her birth mother or father. However, it is disturbingly significant that she now believes she does not need to attend meetings about her care because her social worker has taken the 'responsibility' over from her mother<sup>90</sup>. Additionally, although Mandy was registered for permanency, the PRO application was yet to be formally lodged at the Sheriff Court<sup>91</sup> (at the time of this interview), in other words the process was incomplete. Consequently, Mandy's response suggests that although she understands her social worker has (or will in future have) 'responsibility' for her care; she does not have a clear understanding of the processes through which this 'permanent' decision was made.

**Researcher:** Do you ever go to them [children's panels]?

**Mandy:** Well I used to, but now I don't have to go to them because Sally [social worker] has responsibility for me now.

**Researcher:** Can you tell me what you mean by 'Sally has responsibility for me now'?

**Mandy:** Cus, Sally has taken responsibility for me; it is not my mum anymore.

(Aged 12)

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<sup>90</sup> The Local Authority has lodged a PRO but in the meantime, Mandy remains the subject of a Supervision Requirement through the Children's Hearing System.

<sup>91</sup> Mandy's social worker advised me that other demands on her caseload have interfered with the completion of Mandy's PRO application and that it has not been given priority – an issue which is explored in Chapter Eight (Discussion).

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There was one 16 year old<sup>92</sup> in the sample and uniquely, he (Bryan) felt that he had a direct say in his permanent plan. Bryan was very clear that when the decision was made, he wanted to stay in care long-term and he did not want to return to his mother's or father's care [Bryan did not want to be audio-taped and as such there are no direct quotes from this interview, he preferred the researcher to take notes]. He indicated that when the local authority was taking the decision, although he was younger, his views were considered and were influential on the direction, which was taken.

Bryan advised that he was told at the time that the Social Work department was considering applying for a PRO and what this would mean for him; where after he was asked for his views. He expressed that he wanted both the PRO and also to remain in foster care long term. Since then he has reflected on the decision and admits that at the time, he did not fully understand all the reasons why he was in care and indeed how these reasons influenced his permanent plan. He only recently became more aware of the details about his birth parent's circumstances, which led to his permanent removal from their care. Moreover, the way in which these came to light for him was by chance, during recent and unrelated (to his permanent plan) legal proceeding where a social history was prepared on his behalf. He was given the option to read these (young people over the age of 12 are entitled to see reports). There was detail in that report that he had not known about, which made the actions of the local authority seem even more reasonable and understandable. Yet, despite this new insight, he did not feel he would

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<sup>92</sup> Bryan was included in the sample during the second stage of interviewing children, as discussed in detail in the methodology chapter. He was under the age of 12 when his permanent plan was decided.

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have wanted that level of detail at a younger age; nor did he feel it would have altered his thinking one way or the other, and that it was appropriate to keep the 'whole story' from him (e.g. the true extent of his mother's mental health problems).

Brian felt that three factors should influence what level of detail children are given about their circumstance and these are:

- the child's age;
- the context and extent of the information; and
- the timing of when it is given to the child.

In his case, he felt that at the time he had been given sufficient information to understand why he could not return to his mother's care and that his views were consulted during the process. Having said this, he admits that other children's cases may be more complex making this a very difficult issue to grapple with, but for him the experience has been positive. Brian's response reinforces a key theme, which emerges throughout this present study - although children want to be helped to understand why they can't live with their birth families, they do not want to just hear bad things about their birth families. Having said this, he was not suggesting that adults do not supply some detail in helping children to understand why things are happening, rather what Brian suggested was a need to give balanced and considered thought to what level of information is given to children and to how and when it is delivered.

Catrina and Sylvia (aged 12 and 8 respectively) both demonstrated an awareness that they are not going to return to their birth families. However,



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in contrast to the earlier discussion on Brian, Catrina was unable to identify any reasons for this and she was not able to articulate any understanding of how her permanent decision has been reached. Catrina's limited awareness and/or understanding of the reasons have proved a problem for her. She is resentful of her situation and expressed throughout the interview that she is not happy in care and wants to be with her birth mother. She later indicated how her social worker tells her that her mother does not look after her properly, but she does not believe this and feels that the social work department is lying to her and making things up about her mother. Catrina's case emphasises the incredible difficulty in achieving effective participation for looked after children. Findings from this study suggest that effective participation implies that children will have access to the information that informs decision making, yet the children clearly struggle with hearing bad things about their family. Moreover, although children similar to Catrina may be given some details, she may choose to not believe them. As her response below indicates her loyalties rests firmly with her birth family.

**Catrina:** No, I just know that I can't live with my mum until I am 16  
(aged 12)

In the case of Sylvia (aged 8), she is very clear that she no longer lives with her birth family and that she will be living in foster care long term, but in her case she would like more information to help her understand why this is so and how that decision was taken. However, it is her impression that her social worker does not want to talk to her about it. Sylvia was able to articulate to me that she knows her mother and father have some 'difficulties' which have resulted in her living away from them in foster care,

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yet as her response below suggests – she doesn't really understand it. It is interesting how this 8 year old child has interpreted her social worker's hesitancy to give her more details about her family and circumstances as something 'he' doesn't want to talk about with her and that she feels there are details he is holding back; which could further her understanding and involvement in the process. It reminds us that the individual maturity of the child is as significant to consider as their age, when determining a child's capacity to understand and participate in processes affecting their lives.

**Sylvia:** I don't think he will talk to me about it [the reason why she is in care long-term], because he does not talk to me very much, he keeps it to himself.

**Researcher:** Is that something you would like to talk to about?

**Sylvia:** Well, I don't really understand it [the reason why she is in care long-term].

(Aged 8)

The remaining children in the sample did not convey any direct awareness of their 'permanent plan' to grow up away from their birth families. To understand how these children understood their life situations, they were asked to describe their relationships with their social workers; the reasons why they did not live with their birth families and what they thought was the long-term plan for their care. From these discussions, two particular insights emerged, which have implications for how we work with them to encourage and facilitate their participation in permanency planning. These are:

- Looked after children do not always have a long-term view over their life circumstances, rather their attention may be focused on their

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short-term plan (i.e. where they will be living next, when they will next see their mother or father).

- Regardless of children's circumstances, their first choice is most often to live with their birth families. As such, many struggle with hearing 'bad things' about their birth families – which may be central to the reasons why they can no longer live at home.

Findings from these discussions correspond with other studies on foster care (Schofield et al 2000, Beek & Schofield 2004), which also found that children generally take a shorter term view of their circumstances than adults with responsibility for their welfare would. Moreover, despite considerable evidence that children need a secure and stable base from which to develop and flourish, foster care continues to feel inherently unstable for some (Rowe & Lambert 1973; Fahlberg 1994; Howe et al 1999). For example, when Samantha is describing her current circumstances, she knows that she will not be staying in her current foster home and she will soon be moving on to another carer. However, she does not see herself as being part of deciding where she will go nor does she have an understanding of why a move will be necessary. All of which suggests a minimal understanding, awareness and participation on her part in what is a key decision affecting her life. This despite studies which show that where old enough, children who are consulted and listened to and have their views considered seriously and respected are more likely to experience stability in their placements (Triseliotis et al 1995; Sellick & Thoburn 1996; and Triseliotis 2002).

**Samantha:** well, short-term, we are not staying here like forever.....well; we are staying here until they find somewhere else for us.

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**Researcher:** Okay how has that been explained to you, that you are not staying here and that you are going to be moving somewhere else, why do you think that is?

**Samantha:** Um....I really don't know

(Aged 9)

Asking children if they have a sense of whether or not they are returning to their birth families care or why they have moved from one foster home to another are particularly sensitive and in two interviews in particular, it was difficult to determine if the children actually did not have any awareness of what lead to their current circumstances, or indeed if they were not comfortable discussing it with a stranger; Clare and Colin (aged 11 and 8 respectively) both struggled with this line of questioning suggesting both of these hypotheses. Regardless of which, their responses remind us of the complexity of having such discussions with children, either in a research or direct practice.

**Researcher:** Can you remember how it was decided that you would come and live here?

**Clare:** I don't know

**Researcher:** Can you remember what you were told at the time?

**Clare:** no

**Researcher:** Is this something that anyone has spoken to you about [why she lives in foster care]?

**Clare:** No

**Researcher:** Why do you think it was?

**Clare:** I forgot.

(Aged 11)

**Researcher:** Can you remember when the decision for you to come and live here was made?

**Colin:** Um....I am not sure

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**Researcher:** Okay then, when did you first learn about it?

**Colin:** I don't remember

**Researcher:** That is okay, can you remember who it was that talked to you about it?

**Colin:** It was \*\*\*\* (social worker)

**Researcher:** Can you remember what \*\*\*\* said to you?

**Colin:** I can't remember

(Aged 8)

Children's awareness of their current, short-term and in some cases, long-term plan appears to be rooted in a belief that 'others' have decided that their parent(s) or other members of their birth families were not able to care for them. Moreover, they also suggest that the children were not part of the decision and that there was no 'choice' in that regard. In other words children's understandings of why there were in care was based on somebody else's judgement that their birth mothers and fathers were not able to care for them; and this 'somebody' did not include them.

**Samantha:** Because my mum and dad don't look after me properly Cause, well this is what my aunt told me, because she had too much washing, but \*\*\*\* (foster care) tells us it was because we were too noisy and naughty.

(Aged 9)

**Catrina:** My social worker says my mum is not able to care for me. I think she can, they say she is not able and I really don't have a choice, but I don't agree.

(Aged 12)

**Abbey:** The social worker said she was'nae able and that is what they decided and it happened straight away, we went into care. It is not true. How does she know, she dinna live there, she didnae stay with us, so how can she know, she assuming things about my mum, she assumes things, but they are not true. I want to stay with my mum, but they all say she is unable, but it is not true (Aged 12)



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**Paul:** my social worker has told me that I am not going back to mum and dad's, I know that...she said I couldn't go back in case something happens to me

(Aged 8)

Abbey had recently moved from a foster home to a residential home. She did not want to move at first, however, she described how the rationale for the move was explained to her at the time and she now agrees with the decision taken. This supports the practice of sharing reasons and rationale with children, however, Abbey's response further points a trend throughout this study – that 'others' decide what is best for looked after children and they (children) do not often feel a part of the decision making processes they are subjected to.

**Abbey:** it was'nae working out with the foster carers, and they thought it would be better for me to be living with lots of different adults

**Researcher:** Do you agree with that?

**Abbey:** I dinni ken...because when I stay with foster carers, when I argue with them, I get quite annoyed with them, it was the same when I stay with my nana, but when I stay here and I argue with them (staff), they go away every six hours

(Aged 12)

Interestingly, for 2 children, their current understanding of why they did not live with their birth families was framed by the actual incident that lead to their first reception into care, rather than subsequent incidents and decisions that have taken place since. Although it is possible that the children's responses were in direct reaction to the way in which the question was posed to them, it was evident in these two instances below; that Samantha and Paul's understandings of why they were currently in care was influenced by

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their recollection of the reason or night they first came into care. This could be suggesting that they have not been told otherwise and as such it is their memory of this which pervades their descriptions or alternatively, they do not fully understand how their situations have evolved since then and why a subsequent decision had been made for them to not return to their birth families care. Either of these scenarios implies that these two children did not actively participate in the making of their permanency plan.

**Researcher:** How do you understand why you are living with \*\*\*\*\* and not you're mum?

**Samantha:** I don't know, the police just came and took us away in a car, we never knew anything

**Researcher:** Were the reasons later explained to you?

**Samantha:** No

(Aged 9)

**Researcher:** How do you understand why you are now living with Steve [foster carer] and not with your parents?

**Paul:** I am going to write it down for you.

**Researcher:** Okay, that is fine.

[He then wrote it down and handed me the card]

**Researcher:** May I read this [he nodded yes]. Would you like me to read it out loud or to myself?

**Paul:** Out loud

**Researcher:** Okay 'my mother let me watch \*\*\*\*\* and it was a 15 year old and my friend \*\*\*\*\* and I went upstairs crying and Frankie's mum climbed the stairs and threatened to stab me....so that's my life.

(Aged 8)

Another child's awareness of their circumstances was rooted in a colourful description of what the new home was like and according to him; this was how he understood the decision was made and why he thought it was a

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good idea to move and what's more, why he agreed with the decision. As Steve puts it:

**Steven:** You see this family, they live in an estate right and because at \*\*\*\*\* (previous foster homes), there was plenty of cars going backwards and forwards because at \*\*\*\* it was like a road. So I thought it would be a good idea if I had a bike, I could go and play on it and I like the backyard as well. It is a lovely shape and a lovely kitchen as well; it has a bird bath as well.

(Aged 12)

### *Awareness: the decision making process*

As discussed elsewhere, permanent plans are developed through both informal (e.g. discussions with colleagues) and formal (e.g. case supervision) processes. Permanency recommendations and decisions are taken in several different forums (e.g. LAC reviews, children's panels, adoption panels and court). Yet, the children in this study had little or no knowledge of what these various platforms were. Rather, their knowledge of how decisions were made was narrow. According to the children, key decisions about their lives occurred in two types of meetings: Looked After Children reviews (hereafter LAC reviews) and children's hearings, or alternatively some children did not know where or how key decisions were made and their understanding was based on 'what they thought'. Although the Adoption Panels have a key role to play in making recommendations for children's permanent plans, none of the children directly mentioned them in this study. When discussing processes for how significant decisions are made, such as where they were going to live and why they were not returning to the care of their parents, the children's responses ranged from not knowing anything to descriptions of how decisions are made at Children's Panels and/or Looked

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After Children reviews. Most distinguished the two by describing LAC reviews as those which take place at the Social Work department and Children's Panels as meetings where 'three people' sit on one side of the table and ask questions.

Three children explicitly stated that they did not have any awareness of the processes by which critical decisions were made about their care, which to them suggested that their views were not considered when particular decisions were being made. The following illustrates this by way of their awareness of the decision was made that lead to a move to their current foster homes:

**Steven:** Na, I didn't decide, I never knew about I till it happened.

(Aged 12))

**Samantha:** I don't know....well I think the social workers talk to other social workers about making the decisions...I don't really know though

(Aged 9)

**Colin:** I really don't know

(Aged 8)

Most of the children made reference to the children's panel as being the place where most decisions are made. However, some children's descriptions of their experiences at children's panels suggest meaningless and tokenistic opportunities for participation. For example, although Abbey admits being questioned about her views on the planning, she did not think her input had any impact on the decision of the panel:

**Abbey:** They just talk and everything and ask questions...do I want to stay with my mum and all that. If I say I want to stay with my mum, they say that it is not going to happen, she does'nae go and

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look into it (in reference to social worker), she just said that I must stay away.

(12 year old female)

### *Children's attendance at meetings*

As discussed in the previous chapter, children in this local authority do not attend Adoption Panels. Consequently, they did not come up during the interviews with the children. However, children have both a right and an obligation to attend children's panels<sup>93</sup>. In the case of LAC reviews it is considered good practice for children to attend. According to the social workers and children in this study, most children attend their LAC reviews and in the majority of cases, they attend children's hearings. This next section considers how the children described and experienced these forums, both when they attended them and when they learned of their outcomes.

As previously indicated, the children had limited and varying degrees of understanding of the processes that have impacted and shaped their permanent plans. This was also the case in their perceptions of what meetings were for. The children seemed aware that meetings happen and that sometimes they actually attend, but this did not mean they understood their functions or purposes. For example, in this first discussion with Paul (aged 8), he describes a LAC review and in the second, a children's hearing. It is evident from both of his responses that although he is able to describe

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<sup>93</sup> The child has a right as well as an obligation to attend all the stages of his or her hearing (section 45 of the 1995 Act). However, a hearing may decide to release the child from this obligation if: the case concerns an offence mentioned in Schedule 1 of the Criminal Procedure (Scotland) Act 1995 and the child's attendance is not necessary for the just hearing of the case and/or in any case where it is considered it would be detrimental to the interests of the child to be present at the hearing of the case. If the hearing decide that the attendance of the child is not necessary, the reporter must still notify the child in writing of his or her right to attend [Rule 6(3)]

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the physical layout of meetings (i.e. the table), he was less clear about the purpose of meeting. Similarly Steven (aged 12) demonstrates some understanding of what happens at a children's hearing, but when asked about its purpose he is less sure:

**Researcher:** Do you ever go to meetings?

**Paul:** Sometimes

**Researcher:** What kind of meetings do you go to, you can draw a picture if that would help?

**Paul:** There are reviews, there is a table, there is people sitting round it.

[LAC reviews]

(Aged 8)

**Researcher:** What are they like when you do go?

**Paul:** We sit around a big room and we have got a table?

**Researcher:** Who sits at the table?

**Paul:** I don't know

[Children's Panels]

(Aged 8)

**Steven:** They just bring up reports like how I have been

**Researcher:** Do you know what the purpose of the hearing is?

**Steven:** No

(Aged 12)

The children described meetings (both LAC reviews and Children's Panels) as places where a lot of questions are asked; yet these questions are often not directed at them. Catrina (aged 12) reflects a similar view to Paul (aged 9) and others when she described how at meetings; they talk about her and how 'she is doing'. However, she clearly feels that the adults present are talking 'about her' rather than 'with her'.



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**Catrina:** They [children's panel members] just speak and that and then ask the social worker questions. They don't really ask you questions, they just talk about you and how you are doing in school and stuff like that.

(Aged 12)

**Paul:** Na, I hate meetings...all they do is yap, yap, yap and I dinni get to ...anything to say

(Aged 12)

Colin (aged 8), who has not ever attended a meeting had mixed feelings about whether or not he wants to attend because of his perception that he will be asked a lot of questions:

**Colin:** Yes, well maybe....no, but I don't want to.....because they are going to ask you loads of questions.

(Aged 8)

Mandy (aged 12) who had attended meetings, found her experiences 'embarrassing' because of the types of questions she asked and having to respond to people that she did not know. Yet in saying this, she acknowledged that LAC reviews are easier and less embarrassing; because it is more likely that she will know some of the adults around the table:

**Mandy:** Embarrassing....cause they all sit and look at you ...you could'nae really say anything because it would be embarrassing. It is more embarrassing at those meetings [children's hearings] than those meetings [LAC reviews] because there is people there you dinni keen, at this one [LAC reviews], you dinni keen maybe one of them.

(Aged 12)

Given the children's lukewarm descriptions of their experiences at meetings, they were asked if they wanted to attend meetings (both LAC reviews and children's panels). Once again the responses were mixed. Some children did not want to attend because they simply don't like meetings; others wanted to

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attend so that they can hear what is being said about them. Interestingly, none of the children stated that they wanted to be at meetings so that they could have a say in the discussion. As well, for those who wanted to attend they felt that the timing of meetings (both LAC reviews and children's panels) interfered with important things in their lives, such as school and activities with friends. All of the children's responses suggest that despite the good intentions of having children present at meetings, meetings do not appear to be set up or carried out in a way that is 'child-friendly' or that facilitates the effective and meaningful participation of children.

**Abbey:** Because I just don't like them, I don't like going to meetings [in general].

(Aged 12)

**Researcher:** Do you want to attend these meetings [LAC reviews]?

**Paul:** Yes

**Researcher:** Can you help me understand why you want to attend these meetings?

**Paul:** Because I want to hear what they are saying.

(Aged 8)

**Steven:** Because they [LAC reviews and children's panels] are always on school time... I want to do my work at school

(Aged 12)

Yet even when the children did attend meetings, it did not necessarily mean they understood what they were about as illustrated by Denise (aged 11) and Samantha (aged 9) below. Once again, this raises the question of how effective children's participation can be if they do not have some understanding of the forums in which decisions are being taken. This was particularly the evident when discussing children's understanding of children's hearings.

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**Researcher:** Do you ever go to children's hearings?

**Denise:** yes

**Researcher:** What are they like for you?

**Denise:** I don't understand them [children's hearing].

**Researcher:** What don't you understand about them [children's hearings]?

**Denise:** What, well I don't really know what they are about, what they are going to do.

(Aged 11)

**Samantha:** I don't know really, when they were talking about me, we left the room and sat somewhere else [while at a children's hearing].

**Researcher:** Did you want to leave the room?

**Samantha:** I don't know

**Researcher:** Do you want to go to hearings?

**Samantha:** I don't know....I would rather be there

(Aged 9)

As with other areas of this study, responses from the children varied. Steven (aged 12) described some understanding of what a children's hearing is for, albeit phrased as a question to the researcher:

**Researcher:** Do you understand the reasons why you go to children's hearing?

**Steven:** Na....well to see how I am getting on?

(Aged 12)

Even if the children did not attend meetings (either LAC reviews or children's hearings); there was still a strong desire among them to learn about what happened at meetings. Thomas's (2000) model raises valid questions to consider here, for example are children able to exercise an informed choice about their attendance at meetings, do they have access to sufficient information to make that choice, and if they are not physically

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present how is their 'voice' heard at the meeting? The children's responses suggest that they are curious to learn what goes on in meetings, particularly if they are not present. Yet, their curiosity does not seem based on their right to know or indeed participate, rather on a desire to know. For example, Steven (aged 12) said he would like to know what goes on at meetings, even if he does not attend:

**Steven:** I don't know, they don't tell me anything. They just say I am going to a meeting and they go, sometimes they go when I am at school and off they go to their meetings and talk about things.

**Researcher:** Would you like to know what goes on at these meetings that are about you

**Steven:** yes

(Aged 12)

### *Who do children think are the 'key decision makers'?*

All eleven children in this study identified their social worker (either past or present) as being the key person responsible for making the important decisions that affect their lives; in particular where they will live and why they no longer live with their birth families.

Some children referred to their social worker's managers as also having a role, but not of the same weight that was given to their allocated social workers, as Denise describes:

**Denise:** My social worker, who said they [birth parents] didn't look after us properly.

**Researcher:** Was there anyone else involved?

**Denise:** Na

(Aged 11)

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One child mentioned her previous key worker at the residential home she has been living at when plans were made for her to move to a permanent home. Others, made reference to their foster carers being involved in particular decisions such as moves from one home to next, but not in the decision that they would not longer live with their birth families. None of the children spontaneously identified themselves as playing a role or as having participated in major decisions affecting their lives, such as foster home moves and the central topic of this study, their permanency plans.

When considering moves from one foster home to another, some children named their foster carer (either present or previous) and/or birth parents as having had some say in how that decision was reached. Yet, as we see, despite being clear about the role of their allocated social worker, there is some uncertainty about others identified by the children as being involved in the decision, such as other social workers and receiving foster carers (of home that they are moving to).

*Colin: \*\*\* and \*\*\*\* [foster carer and social worker]*

*Interviewer: Was there anybody else?*

*Colin: I can't think of anybody else.*

*Interviewer: What about you, were you part of it?*

*Colin: No*

*(Aged 8)*

*Researcher: [Sylvia was drawing pictures of those who were involved in the decision for her to move to her current foster home, she had just drawn a picture of her social worker]...That is very good, was there anyone else who was involved?*

*Sylvia: my mum*

*(Aged 8)*

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**Researcher:** A decision was made that you were going to move from your aunties and you were going to move here (current foster home). Can you remember who was part of making that decision?

**Samantha:** Vicki, my old social worker.

**Researcher:** Was there anybody else?

**Samantha:** My auntie and uncle

**Researcher:** Anybody else?

**Samantha:** the social work department, I think anyway, I am not really sure, maybe \*\*\*\*\* [current foster carer], I don't really know though.

(Aged 9)

In contrast to the discussion on foster home moves, for the 'permanent' decision that children would no longer live with their birth families (as discussed earlier not all children identified a 'permanent' decision, but rather a decision that they could no longer live with their birth families), all of the children identified their social worker as the key decision maker. Some children were more certain of this than others, whilst others expressed a sense of ambiguity and mistrust about who the key decision makers actually were:

**Catrina:** I think it was my social worker, but she says it is not....she says it is the panel (children's hearing)....but I think it was my social worker, but she just says it was'nae me...it was the panel, but she was telling them bad stuff about my mum that was'nae true

(Aged 12)

Despite all children identifying their social worker in varying capacities, there was obvious uncertainty among two of the children. When Colin and Samantha were asked who was involved in the decision that they were no longer going to live with their respective birth families; they appeared less

(Aged 10)



## Chapter Six

sure about who was responsible for that decision, but it was their assumption that it was made by their allocated social worker.

**Colin:** *I think it was the social worker, it was my social worker, I think but I might be wrong. But I am sure my social worker said to me that you can't go back.*

(Aged 8)

**Samantha:** *My social worker, well I think social workers talk to other social workers about making decision*

**Researcher:** *Do you think there was anybody else?*

**Samantha:** *Maybe \*\*\*\*\* (current foster carer), but I don't really know though*

(Aged 9)

Despite the children identifying their social worker has having the most responsibility around key decisions (particularly their permanent plan); many of the children in this study received critical information from people other than their social workers. This was particularly the case for both foster home moves and also for outcomes of meetings at which the child was not present. Most often, such information was given to children by their foster carer. However, in five cases, children were told sensitive and important information from members of their birth families. Children received a range of information from carers and relatives, this included details of impending moves, descriptions of foster homes and reasons why they were no longer living with their birth families.

**Researcher:** *Do you know what the plan is for you?*

**Denise:** *Yes, I am going to stay here and then I think I am going to move somewhere else.*

**Researcher:** *How do you know that?*

**Denise:** *Because \*\*\*\*\* [current foster carer] told me.*

(Aged 11)

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**Sylvia:** I just know that because \*\*\*\* [foster carer] said that I would not move on to another carer.

**Researcher:** Is that something that \*\*\*\*\* [social worker] has talked to you about?

**Sylvia:** No, just \*\*\*\* [foster carer]

(Aged 11)

**Steven:** My old foster carers told me, \*\*\*\*, my old foster carer said, that's us found a new family, that just how she put it

(Aged 12)

**Denise:** My old foster carers told me that I would be coming to live here (Aged 11)

**Samantha:** My Auntie just came in and told us. I didnae really want to [move] at first, my Auntie told me good things about it [new foster home], it is nice and all that, so I went to see it and it was okay, so I just came.

(Aged 9)

Given these children's experiences, this study is not suggesting that foster carers and family members should not be delivering these details to children, but it does raise important questions, such as:

- To what degree are foster carers and family members engaged in the actual decision making process;
- What level of detail do foster carers and family members have;
- Is there agreement among carer, birth families and social workers about what level of detail children should be given;
- Is there potential that children could be receiving different messages from different people;
- How are they (foster carer and birth families) supported in this critical role (of sharing information with children); and

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- Is there information that should be relayed to the child from their allocated social worker?

These questions are considered along side findings from the next phase of this study and are discussed further in Chapter Seven (Decision Makers).

### *When do children get information?*

The previous section described from whom children received information. The children's responses also suggested that they were often 'told' of the outcome of decisions, rather than actively participating in their making. What follows illustrates how the children in this study felt they were not part of critical decisions affecting their lives, such as foster home moves and most significantly, the decision that they would not be returning to live with their birth families. Quite simply, the children in this study felt their views were not sought and did not influence on the outcome of critical decisions (placement changes and permanent plans) affecting their lives. The principal reason for this conclusion by the children was because they felt they only learned of decisions after they have been made. As Paul (aged 8) and Steven (aged 12) describe:

**Paul:** I don't know, I just got told. My social worker told me; well at least I think it was her [in reference to decision to move to current foster home] (Aged 8)

**Steven:** Na, I didn't decide, I never knew about it [in reference to move to current foster carers which are to be his long-term carers]

(Aged 12)

Another example of how children learnt of decisions after the fact was in relation to meetings. As discussed previously, most children were aware that meetings (both LAC reviews and children's panels) were 'places' where

decisions were made. In some cases children attended meetings and in others they did not. Sylvia (aged 8) is clear that whilst she knows meetings happen, she neither feels part of them nor additionally, learns about what was discussed at them after they have taken place. As such, she does not feel as though she played an active or direct role in any decisions taken in that forum.

**Researcher:** So the meetings happen, you may not go to them but do you know they are happening?

**Sylvia:** Well \*\*\*\*\* [foster carer] tells me.

**Researcher:** Does she go to the meetings?

**Sylvia:** Sometimes.

**Researcher:** Are you told about the meetings before they happen or after they happen?

**Sylvia:** After

(Aged 8)

In Samantha's (aged 9) case, she was advised that she would be moving a foster home from her aunt's and below we see how her aunt told her she was moving and then took her to meet the foster carer. Although, it is certainly good practice to allow children to have a 'pre-placement'<sup>94</sup> visit, it also suggests that Samantha's views were not sought in relation to the move nor in the selection of the receiving foster home.

**Samantha:** She just said we were going to move families and she took us to see \*\*\*\*\* [receiving foster carer]

(Aged 9)

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<sup>94</sup> A 'pre-placement' visit is where a child has an opportunity to visit a foster or residential home before actually being placed there. It is a chance to meet the family or staff and physically see the surroundings.

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Chapter Seven (Decision Makers) will discuss how social workers deal with the uncertainty and lack of placement options and how this often limits what information children can be given about impending moves :as well as, how it impacts why children's views are not sought sooner, when such decisions are being taken. For the purposes of this discussion, however, Catrina and Denise's accounts suggest that although they were given information about an impending move, they did not feel their views were sought and that they had very little control over the outcome. In Catrina's case, she evidently felt 'why bother' to voice a view, as it makes no difference anyway and with Denise, there is a resolute sense to her tone suggesting 'this is how it is'; neither of which are congruent with principles of empowerment and active citizenship [discussed in Chapter Two (Literature Review) and Chapter Eight (Discussion)], which suggests that enabling people to have a sense of ownership and right to influence decisions about their lives are key to effective participation.

**Catrina:** and I said, I dinnie want to go, and she [social worker] said go and see it.

**Researcher:** Were you then asked after you saw it, whether you liked it or not?

**Catrina:** It does'nae matter, as one of the people [staff] here said we know you are definitely going to stay here, that is what she said....so what was the point?

(Aged 13)

**Denise:** \*\*\*\* (child's aunt) did, but it was after they arranged it.

**Researcher:** What made you think it was after the decision was made?

**Denise:** Cus it would'nae have come after that, because if she had told me before the decision was made it would'nae of been true

(Aged 11)

*What information do children want?*

As the previous sections have demonstrated, the children in this study did not always feel they had sufficient information about their personal circumstances to either fully understand or meaningfully participate in decision making. However, it was also suggested that there are things that children do not want to know, particularly negative information about their birth families. For example, Bryan (aged 16) was clear that he would not have wanted all the details about his mother's difficulties when he was younger – despite these details being fundamental to why the local authority was seeking permanency on his behalf. To unpack this issue further with the children, they were asked what kind of information they would want from their social worker about their personal circumstances.

Unlike many of the other children in this study, Sylvia (aged 8) was clear that she had been told by her foster carer that she was going to be staying in that foster home permanently; yet despite this she remained anxious about what would happen, because she had not discussed her plan more fully with her allocated social worker:

**Researcher:** In terms of being someone who is almost nine years old and living with foster carers, what kind of information do you want from your social worker and what kind of information do you not want?

**Sylvia:** Well, information that I do want is to know what is going to happen. I do want to know things that are going on in my life.

**Researcher:** Can you tell me what kind of things you mean?

**Sylvia:** Like what is going to happen next.

(Aged 8)



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Thomas's (2000) model suggests that genuine and effective participation requires an awareness of processes, control over the extent of one's involvement, access to information and an ability to form an informed view on a particular decision. Thus far, the children's perspective on their experiences of decision making would suggest that none of these criterions were being fully achieved. Working with children who have been separated from the birth families for reasons such as child abuse and neglect, makes it very challenging to determine what children should be told and likewise what they will believe. The loyalties of some of the children in this present study rested with their birth families. Samantha highlights this inherent dilemma of how complex it is to facilitate children's effective participation, whilst providing protection from harmful information; that in some cases they do not want to hear.

**Samantha:** They should'nae say bad stuff about them in front of you, if the children want to find out they should ask, they just dinnie need to know cuz they dinnie have a say.....they should'nae say stuff like that because it makes you think bad stuff about your mum, they should'nae say stuff like she was bad and all that.

(12 years)

She goes on to say:

They shouldn't say bad things about your mum and dad; they shouldn't say stuff in front of me, like um....just say that they have got something wrong with them or something. I dinnie ken...just they have got something wrong with them, they keep bringing it up all the time and they shouldn't do that, it makes children upset.

### *The 'voice' of the child*

As the previous sections suggest, the majority of children in this study did not have clear understanding of the processes through which significant

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decisions were being made about their lives. There was also considerable evidence to suggest that the children did not learn of significant decisions, such as, not returning to the care of their birth families and moving foster homes, until after the decision had been made. Using Thomas's model (2002), this section explores the choices children have over participation and the control they felt they had over the actual decision making process.

As discussed earlier, the children were asked to identify who they thought were the 'decision makers' responsible for their permanent plan. Only one of the eleven children in the sample spontaneously named themselves as a 'decision maker'. The remaining ten children were asked to describe what role, if any they had in the decision making around their permanency plan.

**Researcher:** Okay then, well let's talk about you. Can you help me understand what part you had in the making of this very important decision [to no longer live with his birth family]?

**Colin:** Well nothing

(Aged 8)

**Researcher:** Okay, well this decision about where you are going to live long-term, how much say do you think you will have in that decision?

**Samantha:** None at all

**Researcher:** Who do you think does then?

**Samantha:** My social worker

(Aged 9)

**Researcher:** What about you, do you see yourself fitting into that picture?

**Catrina:** Na, I just want to live with my mum?

**Researcher:** So do you feel you were part of making a decision?

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**Catrina:** Na

(Aged 12)

**Researcher:** Do you think you had any influence over or say in the decision to come and live here?

**Claire:** Na

**Researcher:** Did you want to have some say?

**Claire:** Yes

**Researcher:** Were you asked?

**Claire:** Na, I had zero say.

(Aged 11)

As previous discussions suggest, the children did not often feel involved in decisions; particularly their permanency plan. Consequently, the children were asked to consider what role they would have wanted to play in their permanency plan. As with other areas explored throughout this chapter, responses were both mixed and unsettling. Most often children expressed a basic and fundamental desire 'just to be asked', as Katrina's response surmises fittingly:

**Researcher:** What has this experience [decision making process to be in care long-term] been like for you?

**Catrina:** Not very nice

**Researcher:** Is there anything that you think could have been done differently?

**Catrina:** Yea, they could have asked me if I wanted to be in care, they could have asked me if I wanted to come here, instead my social worker just told me; they didn't ask me.

(Aged 12)

Whereas Abbey's response suggests a sense of despondency and feeling that she does not fit into how decisions are made about her long-term plan and as

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such, she is not 'bothered'. One must wonder if she is truly 'not bothered' or does she feel disengaged by her experiences of not being part of decision affecting her life thus far, that she had developed this sense of disempowerment.

*Researcher: Well what about you? Where do you fit in?*

*Abbey: I don't know.*

*Research: Is this a decision which you want to be part of*

*Abbey: Dinni keen ....I am not bothered*

*(Aged 12)*

*Claire: It depends really on what the decision is*

*(Aged 11)*

### *Contact with family*

Alongside discussions about meetings and the decision that they would no longer live with their birth families, several children brought up how decisions are taken about contact. This offered another opportunity to consider how involved and to what extent, the children felt they had some control and a view over particular and significant aspects of their lives.

Similar to the decision to be in care permanently, some children felt they had little control over frequency of contact with birth families and that their views were not regularly sought on this issue. This is clearly illustrated by Colin's discussion below on how often he visits with his two siblings, who are also in care, but are placed elsewhere:

*Researcher: So somehow, somebody decides how often you see your sisters. Do you know who is involved in making that decision?*

*Colin: No*

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**Researcher:** Do you think you have some say in how often you see your sisters?

**Colin:** Not sure

**Researcher:** Well, if we were to put it on scale of 1-10, with 10 being the lots of say and 0 being no say, where would you put yourself on that scale of 'having a say' in how often you see your sisters?

**Colin:** 2

(Aged 8)

In Samantha's case, she described how she felt her views about how often she wanted to see her mother were not being taken into account, consequently, she used her 'behaviour' to further express herself. As her account suggests, she believes that it was her behaviour that ultimately lead to a change being made to the frequency of contact she had with her mother:

**Samantha:** I kept asking and they would not let me, and then I ran away to my mum's and I kept doing that, I kept running away.

(Aged 12)

Paul's account suggests that he is not satisfied with how often he sees his sibling, but he is unaware of how to change or influence this. Sylvia's response suggests that she is satisfied with her contact arrangements, yet she admits she is not asked her view on the frequency of contact. Later (when Sylvia was not present) her carer advised me that contact is a significant issue for Sylvia which she often expresses to her both verbally and through her behaviour the fact that she does not want to see her mother and father as often as she does. However, Sylvia remains loyal to her family and does not want to 'upset' them by saying she does not want to see them so often. This supports other themes that have emerged throughout this chapter. First, looked after children struggle with pleasing adults in their lives and are often caught between carers and their birth families and second, they do not

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always use words to express themselves and often do it subtly or overtly through behaviour. Both scenarios make it complicated for children to express their true and genuine wishes, which is what we are inviting them to do, when we ask them to participate in decision making.

**Paul:** Well, I dinnie see her very often. I should see her more, like every few weeks.

**Researcher:** Can you tell me from this pile [pointing to cards with 'characters' names on them], who decides how often you see your sister?

**Paul:** My social worker, I only see her every 3 or 4 months

**Researcher:** What do you think of that?

**Paul:** Well that is quite a long time, don't you think?'

**Researcher:** Is there anything that you can do about it?

**Paul:** I don't know, I can't do anything really, can I?

(Aged 8)

**Researcher:** Do you get asked how often you want to see your mum and dad?

**Sylvia:** No

**Researcher:** Do you want to be asked?

**Sylvia:** No

**Researcher:** Are you okay with the way it currently is?

**Sylvia:** Yes

(Aged 8)

### *What can social workers do to facilitate children's participation?*

At the conclusion of the interviews, children were asked to give me 'messages' on what they thought would be helpful for social workers to do, which would help children to express their views and wishes. This question was only asked in respect of social workers, as quite clearly children saw



their social worker as being the one who is in 'charge' of making the decisions that affect their lives.

Overwhelmingly, the children expressed the desire to be listened to. It was important that they felt listened to and that they could talk to their social worker about anything:

**Paul:** When you are talking you can say anything

**Researcher:** Can you explain to me what you mean by that, when who is talking?

**Paul:** When the children are talking, the social worker should just listen

(Aged 8)

Children are sometimes encouraged to draw pictures and to use art to express themselves. This has been found to be particularly useful and was also used in the interviews with the children for this study. However, Sylvia reminds us that despite drawing and art work being a good medium for expression, it is not the only way and it is also important to talk to children:

**Sylvia:** yes, I like drawing, but it is good to ask questions. Sometimes you can't always draw what you want.

(Aged 9)

Steven, uses a witty sense of humour to make a serious point when he describes how he want his social worker to help him understand why things are happening, such as foster home moves:

**Steven:** They [social workers] could help us move.

**Researcher:** They could help you move in terms of carrying bags or in terms of helping you understand the move?

**Steven:** Both. Help me understand the move and help me carry the bags.

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**Researcher:** And how do they [social workers] do that?

**Steven:** Well they have a set of hands

(Aged 12)

Finally and perhaps most significantly, the children all made it clear that they just wanted to be either asked or told of decisions before they were made, not only if there was not a choice but also if they did not agree with that adults were recommending. Catrina fails to see the sense in not asking children and she suggests that by not being asked, children will be unhappy and will be more likely to have difficulty in their placement. Samantha resents being just 'told' rather than feeling included in any discussion of decisions around her move into foster care and subsequent decision making around her permanency plan:

**Catrina:** You should ask them first.....

**Researcher:** Even if they think the child is going to disagree with that they have to say?

**Catrina:** Aye

**Researcher:** How would that help the child?

**Catrina:** .....because, it will make....if they dinni ask them then they will go somewhere and be unhappy, if they do ask them then they will be happy. There's nae point in not asking them.

(Aged 12)

**Samantha:** Yea, they could have asked me if I wanted to be in care, they could have asked me if I wanted to come here, instead my social worker just told me; they didn't ask me.

(Aged 12)

## Conclusion

The children's voices revealed several messages that have important implications for both policy and practice. First and foremost, these eleven

children are growing up in the care of a local authority, yet only one of them was able to clearly articulate an understanding of this as the plan for his childhood. This is significant, let alone what it reveals about the degree to which these children participated in the processes leading to that major decision. Fundamentally, the children highlighted the dilemma that adults grapple with: how can children be effectively and meaningfully involved in decisions about their care and well-being where their welfare is considered to be at risk? Despite expressing a desire to be involved and have their views and wishes included, they themselves admit that there are many caveats. For example, they do express a need for detailed information, but admittedly, do not want to hear 'bad' and painful things about their birth families. Yet without some key details, it can be argued that children are not able to develop an informed view on their individual situations.

Those making decisions for children are required by law to ensure that children's views and wishes are heard and taken into account when making important decisions that affect their lives; clearly a child's permanency plan is one such decision. As discussed throughout the present study, this does not mean children are charged with making that decision; rather that their views help to inform the process. Yet, from a majority of the children's perspectives, they did not feel consulted on their permanency plan. They are based on several key issues, which include:

- Being informed of major decisions after they have been made;
- Not attending meetings where decisions are made; or alternatively when they do attend, not feeling like they are actively part of the discussion;

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- Their perception of social workers discomfort in talking to them about what is 'going to happen'.

It is traditionally suggested that age should play a significant role in defining how involved a child should be in decision making and in determining what detail is shared with them in relation to their circumstances. However, what the findings here remind us is that relying on age as the only benchmark for children's participation is perhaps too simplistic and that there are many other contextual factors which should equally be considered and addressed before genuine participation can occur.

## Chapter Seven

### Decision Makers

#### Introduction

The present study is underpinned by sociological understandings of childhood, in particular the 'new paradigm' by James and Prout [see Chapters Two and Three: Literature Review and Methodology respectively]. They assert that childhood is a socially constructed category shaped in crucial ways by its cultural and structural contexts (James & Prout 1990; Hill & Tisdall 1997). The paradigm sees children as active agents with distinct views of their experiences; a perspective represented in the previous chapter, [Children's Voices] which reported on children's views of the permanency planning process. Whilst children may be active agents, the dominant discourse of children and childhood continues to describe them as passive dependents, who need to be protected and who are frequently victims of family problems (Moss et al 2000; Smart et al 2001). This chapter will show how professionals in the present study most often described children as 'objects of concern' rather than as 'active participants' in permanency decision making processes. Whilst most professionals in the present study expressed explicit support for children's participation rights, descriptions of practice reveal how translating these into practice is rather more complex and predominantly guided by paternalistic views of children and childhood.

During the interviews conducted in phase II of this study, children were asked to identify whom they regarded as being 'key decision makers' in their lives. This was first considered generally and then the children were asked

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to select from those 'key decision makers',<sup>95</sup> they thought was responsible for the decision that they would no longer live with their birth families and that they would grow up in the care system<sup>96</sup> [hence their permanency plan<sup>97</sup>]. As discussed in Chapter Six [Children's Voices], all 11 children in this present study identified their social worker as being the 'key decision maker' responsible for the decision, which lead to their permanent plans.

There were 3 sibling groups in the sample who shared the same social worker. As well, one child (Paul) identified both his current and previous social worker as a 'key decision maker'. In total 7 'key decision makers' were contacted and subsequently participated in this phase of the study [see table 7.1 for a breakdown of the key decision makers]. In addition to these 7 social workers, interviews also took place with two other professionals from the same local authority: the Children's Rights Officer and the Resource Development Manager. The Children's Right Officer was identified by several of the social workers as being a key person in relation to permanent decision making for children in this Local Authority. Although interesting and relevant points emerged during this particular interview, it must be noted that not one of the participating children actually identified the Children's Rights Officer as being a 'decision maker'. This is an issue which is explored in the discussion of this chapter. The Resource Development Manager was interviewed because of the key role that she plays in the

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<sup>95</sup> This could have included the child identifying themselves (although no child did identify themselves as a key decision maker)

<sup>96</sup> The 'care system' refers to either foster care or residential care.

<sup>97</sup> As discussed in the previous chapter, only 2 of the 11 children were clear about their 'permanent' plan in the interviews, in these cases children were asked to identify whom they thought was the 'key decision maker' in the decision that they would no longer be living with their birth families.



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permanency planning process; in that she is responsible for the overall management of the Adoption and Permanent Care panel system, hence the process of children being registered for permanency<sup>98</sup>.

One child identified a previous key worker from a residential placement. However, this person was no longer working there and I was not able to contact them for inclusion in the present study. As well, following two interviews with particular children, their respective foster carers gave some unsolicited insight into children's participation, which was documented in field notes and included in the analysis here [see Table 7.1 below for full breakdown of the sample for phase III]. These were analysed alongside the 'key decision maker' interviews because of their relevance and connection to themes raised by the key decision makers.

Participant	Role	Duration	Key Decision Maker
John	Social work	2 years	Steven
Lucy	Social work	10 years	Children's Rights Officer
Shelley	Social work	More than 10 years	Resource Development Manager

Although the focus of the interviews with children who participated in phase III related to the decision makers, the interviews here did not exclusively focus on the children's individual cases. Rather, they considered permanency planning practice broadly, based on key themes from the present study and in particular, those themes identified by the children as being important to them. For this are discussed in more detail in Chapter Four.

<sup>98</sup> 'Registered for permanency' refers to the formal process by which children become registered within the local authority as being in need of permanency plan. Once this is achieved the local authority formally begins developing a child's permanent plan.

Table 7.1 Decision Makers

Name	Professional Training	Years of Experience	Key decision maker to whom and/or role
Heather	Social work	Data not collected	Bryan
Anne	Social work	13 years	Denise, Samantha & Steven
Carl	Social work	3.5 years	Sylvia
Elliot	Social work	10 years	Paul
Sheila	Social work	10 years	Mandy, Catriona & Colin
Mary	Social work	5 years	Abbey & Paul
Jean	Social work	2 years	Steven
Iona	Social work	19 years	Children's Rights Officer
Shelley	Social work	More than 19 years	Resource Development Manager

Although the looked after children who participated in phase III selected the 'decision makers', the interviews here did not exclusively focus on the children's individual cases. Rather, they considered permanency planning practice broadly, based on key themes from the present study and in particular, those themes identified by the children as being important [reasons for this are discussed in more detail in Chapter Four (Methodology)]. However, during the interviews some of the key decision

makers made direct reference to a child who had participated in the present study and where relevant to the discussion, it is indicated.

The interview schedule for phase III was divided into two sections. The first section was similar to the schedule used in phase I with members of the Adoption Panel in phase II, asking overarching questions, first regarding international and national legislation and secondly on local authority policy and procedure. Additionally, questions were asked regarding 'routes to permanency', which was an issue that emerged in phase I. The second section of the schedule was developed directly from key themes emerging from the children's interviews [see Appendix F]. Per se, the questions directly reflected what the children in the study had identified as being important. As discussed in the previous chapter, three broad themes emerged from the children's interviews, which were: i) children's understanding – how do they understand why they are not going home; ii) how much do you tell children about their situations, when and how do you tell them and who does and should tell them; iii) do children have a say? Consequently, the key objectives of this phase (III) were to explore, based on data collected and analysis from the interviews with 'key decision makers', two other members of staff and the unsolicited comments from foster carers what:

- is the ethos surrounding children's participation in permanency planning, according to the 'key decision makers' [and relevant others], and
- impedes and/or facilitates children's participation in permanency planning.

Similar to interviews held in earlier phases of this study, this grouping was conducted using a semi-structured style allowing for exploration of areas identified by the participants while at the same time, ensuring the dominant themes identified by the children in this study were covered. Three overarching areas emerged during this phase, which make up the structure of this chapter: adult themes, children's themes and barriers to participation.

### **Part 1: Adult themes**

#### *Legislation and principles affecting practice*

As with the interviews with members of the adoption and fostering panel, 'key decision makers' were asked to identify, which pieces of national and international legislation provide the framework for permanency planning practice at this local authority. Similar to those professionals interviewed in phase I of this study, most here identified the Children (Scotland) Act 1995 [hereafter the 1995 Act] as being the key piece of legislation impacting practice. From the 1995 Act, children's welfare or doing what is in children's 'best interest' and keeping children with their families were cited most often as being the fundamental principles from this legislation. Others elaborated on this to say that the legislation also has a principle that where it was not possible to raise children in their own families, they should be raised in alternative, stable, family environments.

Well, certainly the Children (Scotland) Act 1995 and the policy of keeping children with their own families.

(Social Worker, Anne)

One social worker mentioned another earlier piece of legislation (the Social Work (Scotland) Act 1968 and particular regulations, in addition to the 1995

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Act. Like the others, Carl identified the key principles of children's welfare and keeping families together, from them:

Well, there is the Social Work (Scotland) Act 1968, the Children (Scotland) Act 1995 and the Adoption and Fostering Regulations. Just what we think is best for the children. The whole theme is keeping children with their families wherever possible.

(Social Worker, Carl)

Only one interviewee spontaneously mentioned international legislation and its impact on practice, and in doing so he also identified the best interest of the child, but almost uniquely Elliot qualified this with the principle of a child's right to have their views respected:

Well, the European Code of Human Rights and the children's rights one. Again the key principles being the best interest of the child, welfare of the child, but also the child's right to have a view in respect of their lives.

(Social Worker, Elliot)

Interestingly, only one other interviewee placed emphasis on the principle of obtaining the views of children when discussing key principles from legislation, which guides practice:

To allow the child to express a view, the child should be listened to and spoken to wherever possible; again to the maturity of what is going on for them.

(Social Worker, Carl)

Similar to the interviews in phase I, if the interviewees did not mention the United Nations Convention on the Rights of the Child [hereafter the UN Convention], they were asked directly if they felt it had an impact on practice. As indicated above, only two decision makers spontaneously identified the UN Convention or its principles, albeit indirectly. When

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prompted, its role in practice was acknowledged but this was not without some controversy. Some felt that it had made a difference for children, but for others the current national legal framework in Scotland, as the following two responses suggest, overshadowed any such difference:

Yes, there has been a shift in that there are more children's rights officers, even the little books that children get which outline their rights, children have their views heard. So yea, I think there has been quite a shift.

(Social worker, Anne)

Yes, I think parts of that [the UN Convention], but I do think the law is more family based. It gives the parents a lot more rights. I think it is very family focused here. To try and provide for the parents, but I think they actually lose the focus on the child.

(Social Worker, Jean)

### *Local Authority policy & procedure [permanency planning]*

Despite there being a policy and procedural guidelines on permanency planning in this local authority, as reviewed in Chapter IV: Policy and Procedure, and as mentioned by some members of the adoption and fostering panel; there was considerable variety in responses when decision makers were asked about their existence. Responses ranged from minimal awareness of such a policy and/or a procedural guideline by a few to zero awareness by the majority

There probably is, but I couldn't tell you, other than the fostering and adoption regulations.

(Social Worker, Carl)

None as such that I am aware of, there are procedures that we follow, but no policies as such.



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(Social Worker, Elliot)

If you are looking for an actual policy [on permanency planning] within the \*\*\*\*\* social work department...well I am not sure there is there is that.

(Social Worker, Anne)

As majority of the decision makers did not identify any policy or procedures, they were asked if they felt having them would be helpful. There was broad support for having a written policy and procedural guidelines on permanency planning:

It would probably be more reassuring if it was. I think it would give you a clear benchmark when you are talking to other agencies, children and parents.

(Social worker, Anne)

Some type of policy would not be inappropriate.

(Social worker, Elliot)

Rather than written policies as such, other factors were identified as providing the framework for permanency planning practice. Again, responses varied and suggested how:

There is a cultural understanding of what we are looking for I suppose.

(Social worker, Anne)

Similar to the members of the adoption and fostering panel, many of the decision makers made reference to how particular research had been

influential. Rowe and Lambert's seminal study highlighting the '6 month factor' was also identified here<sup>99</sup>. As Elliot described:

Research has been influential, for example the 6 month rule, that if a child has not been returned home within 6 months then you run the risk of that child not making it home. At that 6 month period, you would need to have a meeting with their family and be very clear about what the Social Work Department are thinking, that if things don't start to change then the family run the risk of losing the parental responsibilities to the child, long-term.

(Social Worker, Elliot)

Jean identified how this perceived lack of a specific policy or procedure impacts and indeed, impedes good practice. Moreover, her response is worrying as it suggests confusion on the part of a professional, particularly in attempts to explain and make sense of the permanency planning process to parents; let alone how it would be explained to children:

It is just so difficult to find out what the policies are, so it is hard to just really identify them. It is just sort of 'do this and I think that and then you can do that', they are just really wishy-washy. I have not been able to put my finger on it...this is what the policies are, even though I have asked for it. I do have cases where we are going to be seeking permanency...what do I need to say to families, what are the policies and what are the guidelines, what step is next...what I need to do, it is lacking. It is just sort of go and do it. Okay, well what do I need to do, what are the steps, and I am not getting that.

(Social Worker, Jean)

### *Routes to Permanency*

As reviewed in Chapter Four (Legal Framework), there are various routes to securing permanency for children involved in the 'looked after' system in

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<sup>99</sup> Rowe and Lambert's research found that if children had not been returned home within six months of being admitted to care, they were less likely to be successfully integrated back with their birth families.

Scotland. This study concerned itself with those children for whom a Parental Responsibilities Order [hereafter referred to as a PRO] was the recommended route [reasons for which are discussed in Chapter 2: Literature Review]. One of the themes that emerged during the interviews with members of the adoption and permanent care panel was explored in this phase. There was evidence of a debate that sometimes occurs on what is the best route to permanency for children, particularly when requiring long-term foster care. A child's placement in care can be 'legally' secured permanently through the children's hearing system or through a PRO [the differences are discussed in Chapter Four (Legal Framework)]. What emerged during phase I was a sense of reluctance to make applications for PRO's for children, unless the 'no order' principle could be absolutely satisfied and because of the time that it took; and to some this meant the children's hearing system sometimes became a permanency route. This was explored and 'checked out' with participants during this phase. The responses given were once again varied and pointed to a key theme, which emerges throughout this chapter - regarding the priority given to permanency planning in terms of resources, staff time and more importantly, what children need in terms of security.

In the first instance, participants in this phase were quick to state that applying for a PRO is something serious and something that the local authority would not enter into without considerable thought, as Carl describes:

Well the goal is to keep children with their families, and to take on 'corporate' responsibility is something very serious.

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(Social Worker, Carl)

However, as Anne suggests you can sometimes achieve the same end through the children's hearing system and how this consequently impacts the priority given to considering PRO's in casework:

Well, I think it is not so much reluctance, but it is almost not a high priority because if you think about it, if you have got a child secure through the children's hearing system, so the things you can achieve with a PRO, you can achieve through the children's hearing system. So it is not actually seen as a huge priority and the plans are not different. I have got those kids now on a PRO [who participated in this study], but the plan is no different, in that we are looking for long-term carers.

(Social Worker, Anne)

Having said this, there are challenges to securing children's permanency in the children's hearing system in the literature [reviewed in Chapter 4 (Legal Framework)] and these were put to Anne. Again, her response suggested that there is a lack of priority in practice given to children requiring permanent care and as such, some children do remain on Supervision Requirements through the children's hearing system as their permanent plan.

Well, that is certainly the argument [the children's hearing system does not give children much needed security]. It [a PRO] takes away the need for a child to return to a children's hearing and anxiety associated with that. And it does to some extent; take away that anxiety, but it is not high priority, I think that is why it is delayed.

(Social Worker, Anne)

As well, Anne's response also reflects an example of where children's interests are perhaps compromised because of delays and resource issues [both of these themes emerge throughout this chapter and are explored in detail]. Moreover, and as later discussions in this chapter will reveal, there

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was a lack of confidence amongst the decision makers in panel members' ability to make permanency decisions, thus further challenging the children's hearing system being a route to permanency.

Mary suggests that the individual characteristics and circumstances of a case would impact the route taken:

It would depend on how much the parent was trying to obstruct the plans. For me to apply for a PRO and take away the all the rights and responsibilities from a parent, it would be because they weren't fulfilling them. Take \*\*\*\*\* [child in sample], her mother was frequently disruptive at the hearing, was constantly letting her down at visits and never fulfilling any of her parental rights and responsibilities, so it would have to go that far for the social work department to take this over and make long-term decisions for the future. But if you stay in the hearing system, it has to come back every year and her mum has the opportunity to disrupt that, she is constantly challenging the decisions and saying that she is going to bring them back in a few months and that is putting \*\*\*\* through it all again. So that is why you make a decision to go for a PRO. This is a long-term decision and we are not going to drag her through the hearings on a year basis.

(Social Worker, Mary)

This debate was also put to the Resource Development Manager, who like Anne, acknowledged there are occasions where children do end up having a Supervision Requirement renewed annually through the children's hearing system as a permanency plan, but:

We would actually prefer that the children's panel system not be used as the 'route' to permanency, as a child should not remain on a Supervision requirement long-term.

(Resource Development Manager)



*Timescales*

One of the factors identified by all of the 'decision makers' in this phase was the issue of how long it takes to establish permanency decisions. Furthermore, there are various systems and processes that must be accessed as a permanency plan actually become a permanency 'decision'. For some this represents a failure in the system, as it leads to long delays for children; for others it allows for not only flexibility but also the individual nature of cases to be acknowledged and considered. Others suggest that this is one of the impediments to making children's rights a priority, in that it allows parents' rights to supersede those of children.

I mean we have got timescales when it comes to adoption, and that is strict. But that is after the decision has been made. I would actually totally agree with that [for other permanency options] because I think some of the kids that I have got have been waiting too long. It has never been discussed to be honest. I know that there are no timescales with the PRO, and if the worker knows that there are no timescales, they will tend to let it drift. And of course that impacts the child. For adoption, it is a completely different route, but even timescales don't start until you are well into the process. Therefore, a kid could be left a long time.

(Social Worker, Mary)

Well no, not really. There is not strict timelines or guidelines, but the clarity about where cases are going happens through your supervision, through case meetings determining whether or not you can be working getting this child back home.

(Social Worker, Heather)

Although there are no formal timelines in relation to permanency planning; several of the decision makers indicated that practice is influenced by research (Rowe & Lambert 1973), which suggests that if a child has been in care for six months, they are less likely to be successfully integrated home.



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As a rule of thumb, we would say if a child has been in our care for about 6 months, then you know it will be harder to rehabilitate them home and that becomes a timescale and you move towards a permanency panel, but having said that...I think the whole department is in flux right now. It used to be that after 6 months you would go for a consultation panel, we don't do that anymore.

(Social Worker, Heather)

But having said this, most decision makers and the resource development manager indicated that it often takes longer and consequently children requiring permanency are often subjected to significant and lengthy delays.

Too many exceptions of when this is not being followed [6 month guideline].

(Resource Development Manager)

As with the participants in phase I, those in this phase were asked if stricter timelines in relation to permanency planning would be of benefit. There was considerable variance in the responses, and additionally they revealed two discrepancies in practice. First, there was disagreement as to whether formal timelines or timescales should be introduced in permanency planning. Those who disagreed with the introduction of timescales did so because in their view, there is a need to be flexible in this kind of work. Secondly, it was suggested that practice varies considerably in this local authority at present, indicating that some offices may be using particular timelines and others may not.

I don't think you could stick to timelines, I think there should be general...that sort of thing, but if you [the researcher] are visiting different social workers and different team, this could differ.

(Social Worker, Sheila)

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No, I don't think you can do that [impose timescales], it is so unpredictable. I have some cases where 6 months has gone by and you have a child in care and you think the parent is not going to change anything and then suddenly they have gone for drug counselling and have sorted themselves out. To just ignore that and move onto permanency, that just would not be right. I don't think you could stick to timelines.....? goes on to point out....'if you are visiting a lot of different social workers and teams, this could differ.

(Social Worker, Heather)

On the other hand, others indicated that it would be beneficial to have timescales, or at the very least more structure to the current practice of permanency planning.

I would love there to be some hard and fast lines on that [permanency planning], because it would make our lives easier. I was talking to another colleague of mine from another country where there are actual timelines. They don't have that here in Scotland, or England either and it is really difficult, it is very difficult that you don't have that to support you. It is very much on your own assessment of the situation and your own agenda, rather than hard and fast rules. I think it is unfortunate that there is not more structure to this.

(Social Worker, Anne)

In a later discussion in this chapter: 'obstacles to participation', the implications of not having timescales for children's participation is more fully discussed.

### Part 2: Children's Themes

#### *Children's Understanding: information given to children*

One of the key areas, the children identified was how they often feel they have not been given all the information, which they would want about their life circumstances; a matter which clearly impacts on the degree of their participation in any decision making, as discussed in the previous chapter.

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This was most starkly evidenced by many of the children's lack of awareness and understanding about what were the factors, which lead to the decisions such as moving foster homes and most critically, the decision that they would no longer live with their birth families. Moreover, there was a strong message from the children that any information they did receive was often given after that decision had already been taken. As well, despite the children perceiving their social workers as being key decision makers, it was often not from them that they learned of many decisions, rather it was from their foster carers or other family members. Finally, there was a lack of understanding and awareness among the children about how decisions, which directly affect them, are taken in the local authority. As discussed in Chapter Six (Children's Voices), each of these factors impacted on these children's degree of actual participation in decisions, which directly affected their lives. Consequently, a series of questions were posed to the 'decision makers' and others for this phase in relation to:

- What information they think is given to children;
- What information do they think should be given to children;
- Who should and who **actually is** giving information to children; and
- What factors influence what information children are given?

The themes which emerged from this discussion confirm much of what was said by the children. First, the children are often not made privy to all the information relating to their case. Secondly, they are often informed of decisions after they have been made. Thirdly, children are told important things by people other than their social workers and lastly, children are not

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participating in all stages of the decision making process – hence their lack of awareness of it. As well, the discussion which follows highlights a reoccurring theme, which presents throughout this present study; in that ‘looked after children’ continue to be ‘protected’ in a way that limits their effective participation in decision- making affecting their lives.

There was broad agreement by the participants in this phase that children have the right to information, but there were many qualifiers placed on what information that was and the extent which should be made available, as the following illustrate:

I think it would depend on the information and the impact, I mean it is individual. If you thought it was going to have a detrimental effect, I don't know if I would be sharing it with them.

(Social Worker, Mary)

I think they need to have an idea of the process and the way things are decided. I think that the main thing that they need to know is that the reason why they need a long-term family is not because of them, they need to know that things are happening to find a permanent home and it is not a bad thing.

(Social Worker, Anne)

There was a strong sense amongst the decision makers, that in their adult role they need to be ‘guardian’ of information, and it was their responsibility to control the degree and extent of detail, which a child would be made aware of. However, this is clearly something which social workers struggle with, as evidenced by the themes which emerge below. Although it was generally acknowledged that children have a right to information, there were limitations placed on how ‘honest’, decision makers [social workers] felt they could be with children.

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Well, we should be as honest as we can be. Children have a right to know why they are being looked after.

(Children's Rights Officer)

Below, Sheila is suggesting that in her practice, she tries to balance what level of detail she gives the children with what the child wants and that she operates in a way that encourages children to ask questions. However, this approach is qualified by the conclusion of her statement:

I don't lie to kids and I don't withhold information, but I think the kids I work with have a right to honesty. Now within that, I don't think we should ram information down their throats and I think we should very much work with the child and what they want. But the good thing is any child can ask me questions and they know that. Part of it is saying to kids and saying I will listen to what you want, and what you want will be taken into account....But at the end of the day, what we will do is what adults think is best for them and if that is what they want, then great, but sorry if it is not.

(Social Worker, Sheila)

There was some evidence of how information given to children is in fact censored, which is done to 'protect' children from details that may be harmful to their best interests. Here we also see how factors such as a child's age and personal circumstance are considered when determining what information they should be given:

I think the ideal would be to always have that relationship with a child where they can tell you how they feel about that, or that they can give you their views on what they want to see happen. The reality unfortunately is different than that in practice. Sometimes I do feel we are protecting them and not always giving them the whole picture.

(Social Worker, Anne)

I believe that all children have a right to information and I would never advocate lying to a child, but you are dealing with varying



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ages and varying degrees of emotionally damaged children. There is sometimes a feeling that you want to protect them from the past, but it is more about finding the best ways to explain the past to the child.

(Social Worker, Elliot)

I don't think you should lie to them and not be somewhat truthful; it is how you get the truth to them on a level that they can understand.

(Social Worker, Jean)

One respondent raised the issue of throughout childhood generally, there are often 'normal' life struggles that you would and would not tell a child and wonders why adults always seem to struggle with telling children things that are not 'good'. She goes on to consider how significant this point is for adults to consider, particularly when working with looked after children who must be helped to understand and to come to terms with why they cannot grow up with their birth families.

But the truth is better than fantasy and how are we to effectively deliver that to children? Children should be told the truth if a child's parent died, we would not dream of not telling them....so why are we afraid sometimes to tell children terrible things?

(Resource Development Manager)

### *Age as a factor*

Age was identified by the social workers as being one of the most significant factors that should determine what information children should receive about their life circumstances. Where this was most evident, was in discussing how information might be censored or indeed kept from a child, depending on their age. In saying this, there was also evidence of the need to balance what children are told against simply 'putting down' the parent:



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Well yes and no. Again, it depends on their age again. I don't want to run down their parents. I gave them information that their parents are not able to look them at the moment; maybe they are drinking or taking drugs at the moment. I don't want to give them all the details about all the other people in her family. When she is 16, she may ask to see her file and then we might have to sift out what is not relevant to her.

(Social Worker, Carl)

I think the older they get, the more honest you can be with them. You can't very well say to a three year old, you can't go home because your mummy is addicted to drugs. I don't think that would be appropriate. I think the older they get, the more information they should receive. You really need to look at where they are to determine how much information you should give to them. You are not lying to them; they just don't need to know that.

(Social Worker, Jean)

Sheila and Anne also identified age, suggesting that older children are more likely to have an understanding of the process and consequently would be in a better position to receive more information. However, this assumption is challenged by what the children themselves identified in the previous chapter, in that most of the children irrespective of their age did not have an understanding of the decision making processes in this local authority.

I think back to their age, the older they are, the more they have the picture. The younger they are, they will get a picture that is not good and that has nothing to do with them, and what adults are trying to do, but sometimes things don't get sorted as quickly as they would like. I think older children have more of an idea of that process and this process. So I think the child's age, the younger they are, the less they need to know.

(Social Worker, Sheila)

You would think it would be easier with older children, as they might understand. The older they are, the more they have the

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picture. The younger they are, they will get the picture and that has nothing to do with them, and that adults are trying to do, but sometimes things don't get sorted out as quickly as they would like. So I think the child's age, the less they need to know.

(Social Worker, Anne)

Mary and Anne also identify age as a significant factor for what information children are given and furthermore, they draw a direct correlation between a child's age and level of understanding. However in saying this, Mary also suggests that although children have a right to know 'what is going on'; this would not necessarily mean they have an active part in determining what these plans are going to be. Anne's response suggests that children will be consulted, but it is the adults who will ultimately determine which areas of their lives that they may have a say about:

I think that the child should always be made aware. It is depending on their age, because I think that if they are going to be old enough to understand, I think they have a right to know what the plans are and to have them explained to them fully.

(Social Worker, Mary)

The older the child, the more you involve them on that basis and have conversations with them on things in which they are going to have a say.

(Social Worker, Anne)

Carl identified that although age is a benchmark, it should not be the sole one and that children must be considered as individuals. Factors such as individual maturity should determine how much detail children are given on their life circumstances:

I would hope that each case is treated on an individual basis because each child is individual and they have a right whether they are 3 or 13 to be told as much information as they can understand. Well, I

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think maturity. You could have a very mature 10 year old and very immature 15 year old. You have to gauge what it is they need at the time. I might say that mum and dad are not capable of doing this, or mum and dad are having difficulties with alcohol and whatever impacts their abilities. It makes it simplistic enough that they understand as early as possible.

(Social worker, Carl)

Also significant, is to consider what children may already know based on their own life experiences and exposures to the difficulties which lead to their reception into care. Here, Jean suggests that if children have clear memories of what happened in the family home, it allows a social worker to be more open with them in discussing why they [the children] don't live with their birth families. Once again, age is suggested as benchmark for sharing information with children and it is acknowledged how difficult this can be. However, here as with earlier discussion points there is a sense that children need to be protected from potentially harmful information.

I mean they did live with mum, did they see her do drugs? They may know what is going on and I think at that point, you might be able to say a bit more to them. You know...and explain in terms of the drugs why it is not safe. If they lived there, they may know what is going on and you know they are always hearing mummy's not well.

(Social worker, Jean)

I think well the older they are, well the closer they are to 12 and those over 12; they will have a sense of what is going on at home and I think maybe their needs, need to be heard a bit more. So age does play a part, in terms of what going on and what they want, and what needs to happen. It is hard to explain to them why they can't [live with birth families if they are unsafe], and why our decision is what it is. Although we have to listen to what they want, we can't necessarily go with that.

(Social worker, Sheila)

### *Information after the fact*

One of the most striking findings in Chapter Six: Children's voices, was how they [children] often learned of decisions after they had been made; suggesting they had little participation in the making of them. Particular examples of this included: foster home moves and replacements and the principle subject of this study; the decision that they would no longer live with their birth family. This issue was put to the decision makers and others during this phase of the study and the findings corroborate what the children themselves were saying - that children would be given key details of both meetings and decisions, but that this would occur after they had taken place. In other words, children would be advised of decisions that affect them but not necessarily involved in their making.

Well, I would share with the child the decision of the panel and I would put it in context, that this was the decision of the panel, but that we also had to go to court and it will be the Sheriff's decision, not the social work department.

(Social Worker, Sheila)

Five issues emerged as 'reasons' or context as to why children often receive information 'after the fact'. These included:

- lack of choice;
- crisis nature of the work;
- false promises;
- systemic barriers; and
- parental control.

### *Lack of choice*

One of the factors identified bluntly by Anne below relates to 'choice' and how often there is no choice, particularly when it comes to choosing children's foster carers. This issue is explored in a later section in more depth, but here it also demonstrates how a child was going to be made aware of a decision that she/he had not part in making; suggesting that if decision makers can't offer children a choice, it means involving them in decision making even more difficult and challenging.

I am off to tell a child she is moving. There is no choice.

(Social Worker, Anne)

### *Crisis nature of the work*

Several respondents identified the 'crisis' nature of child protection work makes it difficult to include children and to ensure that they are getting the information they deserve at the time they deserve it:

Well ideally a child would be given warning. With this child, it is possible as she is in a unit and there is not an immediate rush to get her out. She is due to move to a foster home next week. But another boy I am going to see tomorrow, his carer told me on Monday and said that she wants him out by Friday. His carer told him, he has had previous placements where he was not told and it just happened.

(Social Worker, Anne)

A lot of moves that I have seen here recently, have been the foster parent saying 'I can't do it; I need this child moved by next week'. So it is hard to give them [children] much notice because we don't know half the time if it is going to happen. It is often a crisis that we are dealing with, but I think it is important to give them all the information we can.

(Social Worker, Jean)



### *False promises*

The decision makers in this study clearly struggled with limiting what information they give children because they were conscious of not making false promises to them.

No, I think I am being honest with them, but I think what they are hearing is often practical. For example, I had one case with some children who wanted to stay with the carer they were with, it was terrible because I had to tell them no sorry that was not the case, they were not going to stay with this carer, and that the plan was to find them a long-term family. But that doesn't really ring true, I mean their previous social worker said this to them, but a family has not been found yet and this has been three years. So of course they are going to think this is not being taken seriously. And they are going to latch onto the parent they are with and you can understand why they do that, but I suppose what I am saying is that I will be honest with them, but I am very pressed with the information I can give them. I don't like giving them false promises. It is hard to say

(Social Worker, Anne)

Half the time, we don't even know where they are going, so what information do you give them?

(Social Worker, Jean)

Elliot also clearly struggles with what information can be given when it can change as it is subject to so many other factors:

How much preparation do you give have a child [in terms of information], when you don't know what is the plan for them and this can take so much time, in terms of process and because of lack of resources, for example, you may know that you are going for a PRO for a child, but you don't have a family and you may not for some time...how many times can you tell a child this? As well, because of the Children's Hearing System and the court, the plan could change from what you have told the child, to then what is actually the outcome. You are then left with a child, who is expecting to move on, but does not for some time. How do you properly prepare children for this?



(Social Worker, Elliot)

Likewise Carl struggles with what information you give a child, when the local authority is not entirely sure about what action will be taken, given other influences such as decisions taken at court or a children's hearing.

We cannae say that something is definitely 100% going to happen...but that we can give them the social workers view that they may not be going home to live with their mummies or daddies, we cannae promise one way or the other.

(Social Worker, Carl)

Well, from the beginning....as soon as we know what the plan is that the child will not be going home, then I try to explain to the child they wont be going home, that is what the social work plan is and their parents will have different view, but our view is that they should stay where they are living either temporarily or they will then move.

(Social Worker, Carl)

### ***Systemic Barriers***

Jean suggests that sometimes the 'system' works against information that you can share with children and it results in children being unsure of what is the plan for them; irrespective of what information they may or may not have. She recalls a case [although not a permanency case at present, it was identified as being described as indicative of one], where the children moved to and from care and by the system allowing this to happen; the children became anxious and confused about what their actual plan was:

I think sometimes, because these kids are completely unsettled and they need to know, they can't get settled, they are absolutely anxious kids and they want to go home, but they know they can't. They were in care a year, went home for 3 months and now mum and dad have put them back in care on a voluntary agreement. They [the children] are absolutely anxious and they don't know if they are coming or going, so I do think they need stability to know whether they are

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coming or going, so yes, I do think it poses a dilemma for me because I would rather be right up front, this is what we are doing, so they settle, but this way...they can't. They have no stability whatsoever.

(Social Worker, Jean)

In a later discussion on barriers this point will be further explored, however, it is also worth mentioning here. Many of the decision makers indicated that they do not have the proper time to spend with children because of other workload issues and how this subsequently not only impacted what information they could give children; but also how it limited their capacity to review information with children over time, to ensure that they did understand it. As Mary describes:

But for me, kids forget very quickly and they need it to be an ongoing thing. It is so frightening to be moved as an example and I don't think I am able to give them the support that they need. So that they know why I am working with them and where they are going to be for the next six months. There is just not enough of that there.

(Social Worker, Mary)

### ***Parental Control***

One of the decision makers identified how children's birth parents also influence what information children receive about their life circumstances. She purports that the system does not put the needs of children at its core, rather it focuses on the needs of parents:

Because the focus right now is so much on parents and families, a lot of them don't want their kids to know what has been going on, they get very angry.

(Social Worker, Jean)

She illustrates this by discussing a current case, where the permanency plan for a sibling group is to be in care long-term. This example clearly points to a situation, where the children have not been given the details of their plan

because of the control that their parents have over the information they are given. As well as saying this, Jean also identifies another systemic issue, which is the length of time it can take to achieve permanency and how this is also a consideration when determining what information children should have:

Well at this point, we are seeking permanency for both of them. But the parents are fighting us on this and they do not want the children to know about it. So at this point, I am not able to say anything to them. [Researcher: Despite the fact you are going for permanency, how old are the children?]

Because we have to run through all the loopholes; we have been to the Adoption panel, we are now being referred to the children's panel; we are not going to say anything until we get through these loopholes, because it might be another 2 years before we get to that stage. I mean we let the kids know that this is what we are doing so they stay where they are at [current foster home]; we just won't talk about permanency. And that is what I have been told to do; it was not necessarily my decision.

(Social Worker, Jean)

### ***Who do children get 'information' from?***

The majority of 'decision maker's felt that as the child's social worker, they should be delivering pertinent information to the children. In doing so, they saw themselves as having the 'control' over what information children did receive. Having said this, many recognised that others also have a part to play in this, for example foster carers.

I don't know if I am biased, but I think it should be the social worker, well it should be either the social worker, or the foster carer because sometimes the social worker....I mean they [the children] are not living with the social worker, they are living with the foster carer.

(Social Worker, Carl)

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Believe foster carers have a significant role in helping children to understand as they are with them 24 hours a day and they often deal with the fall out of any decision. As such they need to be kept very much informed of the process and the information children are receiving, that is not always the case though.

(Social Worker, Elliot)

In contrast, Mary felt that despite the significance of the foster carers; it should be social workers giving information to children:

I would see that as my role, I still think the between the foster carers and myself, it should be me...I am independent of their lives.

(Social Worker, Mary)

However, Mary goes on to express a concern shared by other decision makers about the amount of time they have to spend with children:

I am getting disillusioned with the kind of information and stuff that I have to share with a child, but I don't feel I am there to support them with it. I guess on the one hand you have the information that you want to share with them and on the other, you want to make sure you have the time to support them...and that is not there. I don't think that is good enough for the kids.

(Social Worker, Mary)

Moreover, children are often receiving mixed messages from different people; particular from their birth parents. As Sheila and Carl describe there is a need to ensure that children are receiving relevant and correct messages about their care:

I think for instance in the kids that took part in your research, what we have is children who are moving house regularly and their mother saying to them, 'they are moving us....I am doing better...I am doing this and I am doing that and when this happens you can come back and live with me'. But the kids need to have the message that this is not going to happen, that this is going to be their home, get on with your life, this is your family, you can still have your birth family and that is really important, very positive and good

relationships, but you also have this family and this is where you are going to stay for the rest of your childhood, so move on, be happy, settle and put down roots.

(Social Worker, Sheila)

There have been times when she has been told things [from her birth parents] and been told to not pass them on and it comes out eventually...and it really confuses her. So we have tried to address that and to ensure that the information she gets is relevant and that she needs to know it and that she hears it from us [social worker or foster carer] and not second hand.

(Social Worker, Carl)

I mean children tend to forget these things. I mean I ask \*\*\*\* [child in study] quite regularly what she thinks is going to be the future. I mean trying to explain a PRO to a child in jargon-free terms; I mean I think if you still asked her, if you said to her do you know what your long-term plans are, I am not sure she would actually know. I would like to be seeing her once or twice a week, to continue going over with them, why we are doing what we are doing.

(Social Worker, Mary)

### ***Children's attendance at meetings***

As discussed more fully in Chapter III: Policy and Procedure, there are 4 primary forums and/or meetings where discussions, recommendations and decision-making occurs for looked after children's permanency plans. These are: looked after children reviews [hereafter LAC reviews], adoption and permanent care panels [hereafter A&PC panels], children's hearings and the courts. Chapter VI: Children's Voices, revealed mixed views from the children about whether or not they wanted to be in attendance at meetings provoking questions about how this might impact on their participation. Likewise, the decision makers also had mixed views on children's attendance at meetings. Once again the child's age and the need to 'protect' children



from potentially harmful information and processes; emerged as key factors for determining whether or not children should be in attendance at meetings.

There was broad agreement amongst the decision makers and others interviewed for this phase, that a child's age is a factor in deciding whether or not children attend meetings; however like other areas of practice explored in this chapter, there was considerable variance in the responses depending on the child in question and the type of meeting being considered. For example Jean felt that children under 10 should not attend meetings (LAC and Children's hearings); whereas others felt they should. Below Anne indicates her belief that all children should be present, but cautions that you need to be cognisant of how you handle things in front of the children. Having said this, Sheila reminds us that although children have a duty and right to attend children's hearings; an element of control over this rests with the adults and when it is exercised, it is done to 'protect' a child from what may be a distressing situation.

Yes, I think they should [be present at children's panel and looked after children reviews]. But you have to be careful how you handle things in front of their parents, or if you have an upsetting situation.

(Social Worker, Anne)

If I really think a child should not be at a meeting, I would manipulate it. I am not going to lie about that. I would say to them....well you know they do have a right to be there, but for various reasons, you should not be.

(Social Worker, Sheila)



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Below, Elliot considers how if a younger child were to be present at an advice children's hearing<sup>100</sup> they could be exposed to conflicts and/or information that could be harmful to their well-being, yet this is critical step along the way to permanency decision being taken forward. If a child was not present, they would not have the opportunity to voice a view in person and likewise, the panel would be unable to ask direct questions of them. Consequently, the question needs to be asked – is this adequate?

It depends on the child's age. I think that for children under 8, even 10 it may not be appropriate at that stage of a permanency discussion [going before a hearing for advice]. You must 'protect' them from being exposed to potential conflicts between their parents, the social work staff and their carers. Children should be protected and there are times when coming to a hearing that they will hear very conflicting messages and that is not helpful.

(Social Worker, Elliot)

Well, basically you can request that a child does not attend [children's hearings]. I wouldn't ever make a child attend, if I thought it was going to be...it is usually the child's decision and if they are saying to me they don't want to go, I won't make them.

(Social Worker, Mary)<sup>101</sup>

Sheila also agrees that young children should not be present at children's hearings, implying that their presence would be distracting to the adult discussion which needs to take place. Furthermore, in respect of older children, although they attend their inputs and views are not always heard.

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<sup>100</sup> If a child is subject to a Supervision Requirement and the Local Authority is making application for PRO in respect of this same child, they are required to seek the 'advice' of a children's panel before the case goes before the court. This is an opportunity for the children's panel to comment on the local authority's permanency plan for a child

<sup>101</sup> Children's right to attend children's hearing and how they are required to receive in writing notice of the meeting and how they would need to be formally excused from attendance

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This corresponds with what many of the children in this study said about children's hearing, in that they are present but feel the adults are talking about them; rather than with them.

Very young children, I don't think they should be there, they don't understand and it takes adults attention away from the discussion. I think older children do tend to be there and do tend to be heard but I think there are times when they are not.

(Social Worker, Sheila)

When determining whether or not a child should attend a meeting, two considerations emerged from the interviews with the social workers. These were: 1) who was going to be present at the meeting and 2) what the discussion was going to be about. Below, Sheila states that when a particular child's mother is going to be present at a children's hearing, she requests that she [the child] be excused from attending. Sheila also acknowledges how adults need to consider what is going to be talked about at the meeting and what children will hear, if present for the entire meeting. As with other areas of this study, a child's capacity to participate may be compromised because of the adult 'responsibility' to protect them from a situation that may be harmful.

The problem with \*\*\*\*\* [child in this study<sup>102</sup>], in particular has been her mum attending [children's hearings]. If I know she is going to be there, I request that \*\*\*\*\* does not attend. It is really difficult for her to sit and listen to her mum.

(Social Worker, Anne)

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<sup>102</sup> This particular child is currently in care under a supervision requirement, requiring annual reviews through the children's hearing system. She is registered for permanency and the local authority has made an application for PRO, but because of the time it taken she is still required to go to annual children's hearings where her status in care is reviewed.

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I think it can back fire, meetings can be hard. Sitting at a table and hearing unpleasant things can be awful and that can be an intrusion that stays with them [children]. So I think, what we tend to do is when children are going to be there, is have a bit of the meeting for them. Children are always listening and sometimes it may not be appropriate for them to be present.

(Social Worker, Sheila)

Mary felt that age also impacts on children's attendance at another kind of meeting, the adoption and fostering panel<sup>103</sup>. Here she directly refers to the structure of these particular meetings and how she feels that depending on a child's age, they should actually attend, but cautions they [the adoption and permanent care panels] are not conducive to having children present in their current form and changes would need to be made to accommodate the needs of children.

I think depending on their age again, I think they would find the whole thing a complicated thing to be at [adoption and fostering panel], unless they changed the structure.

(Social Worker, Mary)

Of the three meeting formats, most viewed the LAC reviews as providing the most favourable environment for children's participation; in that they took place at the social work department, the child would know most of those adults present and they were the least 'formal' of the three meeting formats. One of which corresponds with one of the key points made by the children in this study, that they find LAC reviews 'easier' to talk at, because they know the people in the room. Having said this, Sheila admits that in her

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<sup>103</sup> As discussed in the Chapter VI: Children's voices, children in this local authority do not attend Adoption and Fostering panels as a general rule – although there is nothing written in policy suggesting that they can't attend.

experience, there is some variance in how these meetings are conducted and this has an impact on children's participation:

Yes, in the LAC reviews they are looked at. I think children's views should be heard and this is one way of ensuring that. Sometimes it makes a difference in terms of who is chairing your meeting, some are better than others at ensuring the child's views and wishes are put forward and discussed at the meeting.

(Social Worker, Sheila)

In relation to children's attendance at any meeting, there were 5 factors emerged; each relating to 'protecting children'; rather than facilitating their participation in meetings. These are each discussed individually below and they include:

- what children already know;
- excluding children from some or part of the meeting;
- restrictions on report writing, if children are to be present;
- children getting different messages from different people; and
- adult format of the meetings;

### ***What children already know?***

It is important to remember that many children have memories of particular circumstances, which lead to their admission to care; as evidenced in the previous chapter. Consequently, if children are present at meetings where such details are being reviewed and discussed, or where particular conflicts arise, they may be used to this as Anne indicates. On the other hand, Mary feels that despite what children might already know; there may be little benefit in them hearing it all again.

Depending on age of course, an older child may well be used to this conflict and they won't be surprised.

(Social Worker, Anne)

I don't know if it would be helpful for them to be there and say what they wanted, because more often than not, they are disagreeing with what is happening, so they may find it distressing to sit and listen to a whole lot of professionals saying well this is why you are not going to live with your mum again, you know these panels go back historically and discuss it all. Now \*\*\*\* [child in study] knows it, she has heard it all before, but I don't know how healthy it is for her to sit and have it all brought up again.

(Social Worker, Mary)

### ***Excluding children from some or part of the meeting***

Should children be excluded from some or part of the meeting? Again, age is identified as a factor and an assumption that younger children will not be aware of drug use, domestic violence – divided loyalties here are an issue.

I think there is an argument for having the child excused yes, if there are key differences or conflicts between the department and the family.

(Social Worker, Anne)

### ***Restrictions on report writing***

As a general rule children do not receive written copies of reports that are prepared for meetings<sup>104</sup>. However, what is written in these reports forms the basis of the discussion at meetings and as well a child may unintentionally see what is in the report if present at the meeting. Consequently, some social workers felt that if they knew a child was going to be present at a meeting, it could result in some censorship of the level of detail going into the report. They spoke of needing to achieve a balance

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<sup>104</sup> If the child is over 12 years, they can request to see the reports for children's hearings. However, they are not automatically given to them.



between what they put in the reports and protecting children from information that they may not have previously been aware of.

Again it is how much information we give the child, we would be restricted in what would put in the report. I mean when I write a report for a children's hearing, I am conscious of whether or not the child is going to see it. I mean they could pick up the report, and there could be things in there they did not know about and that would be the first time they hear about it. It is difficult.

(Social worker, Carl)

### *Messages to children from different people*

Another worry of having children present at meetings; particularly those involving adults outside the social work department, was the lack of control there would be over what was said directly to children and what messages they might take from the meeting. In these instances, there was still a sense of the decision makers 'responsibility' to protect the child, from situations that could be emotionally damaging.

I had this one case where a boy wanted to see his mother more often, but this just was not possible for lots of reasons. She had her own difficulties and would often miss contact, which was very disruptive to this boy. Well at the panel, one of the members turned to him and said would you like me to say to your mum, that she needs to see you more often....taking no account of the work I had done with this child, telling him that we just needed to take what we could get from his mother and accept this...well his eye's lit up and he said 'yea'. I had to speak up and say, look this it not appropriate to say that to him...and well oh my goodness. I then had the chance to speak to the panel and give them the fuller context, but this would not have been appropriate for the child to hear, but they must not make promises to him that they cannot keep.

(Social Worker, Sheila)



*Adult format of meetings*

It was acknowledged that meetings were not always set up in a way that was inviting to children, which in the case of adoption and fostering panels, was to some decision makers, the reason why children do not attend.

I suspect that someone like \*\*\*\*\* [child in study] finds the children's hearings quite daunting, I don't know how she would actually cope with sitting at a permanency meeting, you have the medical advisor sitting there, it looks a more daunting forum, and I suspect that is why children are not invited to attend.

(Social Worker, Mary)

It was recognized that most, if not all meetings take place during the regular 'adult' working day, hence during school hours. As some of the children identified in the previous chapter, they don't like being pulled out of school for meetings and consequently choose to not always attend, and as Carl notes:

It is an issue to always be pulling children out of school to go to meetings, we take children away from their parents for not getting them to school, and then we go and take them out of school

(Social Worker, Carl)

The previous discussions suggest children's attendance at meetings is at times problematic and there are a number of views on should influence decisions on it. However, current practice is that children do attend some meetings, in particular children's hearing and LAC reviews. Consequently, how they are handled and how children are prepared for 'meetings' is worthy of consideration. Below, Carl describes and simple yet exemplarily way to help children prepare for children's hearings.

They [children] attend the hearing and it is nervous for them, but if they have already been there then they know what is there, they

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know how long it takes to get there, they have met the receptionist, they have met one or two of the reporters and they have met some of the panel members, they [children] know where they are going to be sitting...

(Social Worker, Carl)

Having said this, he indicated that there is not always the proper time to do this and that it does not happen for all children, nor does it occur before for all types of meetings that children might be involved in. This issue will be discussed further in a later section considering barriers to children's participation.

### *Ways for children to express views and wishes*

Aside from a child being present at meetings and being asked directly what their views and wishes were, four other avenues for children's expressions were identified by the decision makers and these included: i) forms for children to fill in; ii) children's behaviour; iii) other people; iv) context. Having said this, age was once again identified as a significant factor to consider when determining how able children are to express themselves.

I think \*\*\* is less able to express his views because of his age [Colin, aged 8]. He wonders why he can't be back at home with his mum. Everything has gotten a bit fussy. Before we were doing some life story work, he was able to say my mum is not able to look after me; she is not able to keep me safe. He is still able to say that, but he is less clear in his head.

(Social Worker, Mary)

### *Forms for children to fill in*

The local authority has developed formal mechanisms for children to express their views and wishes in meetings, regardless of whether they attend or not. In the case of LAC reviews and the adoption and permanent care panels,

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children are encouraged to fill in short questionnaires before meetings and these are brought to the meetings and given to the adults in attendance. The questions are general and ask children how they are currently doing and it is meant to be an opportunity for them to express their views and wishes for the meeting. As the children in the pervious chapter indicated, these are appreciated and those who had been given them [not all children mentioned the forms] felt they did provide an opportunity for their views to be brought to meetings. This corresponds with what the decision makers identified, as Elliot describes:

Children are able to write their own reports for these meetings [LAC reviews] and they are invited to attend and what they say does have some influence over the direction and decisions taken at the meeting.

(Social Worker, Elliot)

You would always attempt to get a view, but that does not always mean directly asking the question, it could be about their behaviour. But the older the child, I would definitely ask the question.

(Social Worker, Sheila)

### ***Children's Behaviour***

As the participants in phase 1 indicated, children express themselves in many ways and it is not always verbally. Many of the decision makers also indicated that children's behaviours should also be considered as a vehicle for children to express their views and wishes. This does have implications for how children's behaviour is interpreted and what subsequent weight is given to any conclusions drawn from children's behaviour by the decision making forums. None the less, it was regarded as significant and it will be discussed further in the next chapter [Discussion of Findings].

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We would probably be looking for clear signs from those who are caring for them and those who are supervising their contact with their families. So you would always attempt to get a view, but that does not always mean directly asking the question, but it could be about their behaviour.

(Social Worker, Heather)

### *Other people*

Looked after children often have several adults involved in their care, and decision makers felt it was important to also consider the impressions of these people in determining how a child is doing. As indicated elsewhere, social workers have limited capacity to spend extended periods with the children and they are not the ones involved in their day to day care. Consequently, obtaining input from other professionals and carers was regarded as a reliable vehicle for children's views and wishes to be obtained. However, as the following suggests it is possible to make assumptions and this should not replace asking children themselves. A teacher describes how a child's presentation has improved since being with a particular carer, which refers to the child's physical well-being and perhaps their emotional; but without also speaking to the child one does not actually know their his/her views and wishes . As such, other peoples 'impressions' and 'observations' should inform part of the picture of how a child is doing; rather than form the basis of it.

There are a lot of people involved in making a decision for a child, aside from the formal things that need to be filled out. You have also got the informal chance with teachers, health visitors and you get a much fuller picture and I think that has great influence on how a case moves forward. For example, I have had a case where the child was placed with a particular carer and his teacher advised me that he was just 'blooming' since placed there.

(Social Worker, Sheila)

### *Context*

One decision maker made reference to the context in which the views were given as being a significant factor to consider, when giving weight to what a child may have actually said as a true reflection of what they actually meant.

A child's articulated view is important, but it may not be their actual view. It is the overall assessment of that, which is more important, for example the context in which those views were made?

(Social Worker, Elliot)

### *How influential are children's views and wishes?*

There was a range of responses in relation to questioning how influential children's voices actually were in practice. They ranged from 'possibly not at all' to 'not enough' to 'hugely influential'. Broadly, there was a sense that whilst children's views and wishes were sought and considered, not enough attention is actually given to them, when decisions are being taken by the local authority. Reasons for this ranged from social workers not having enough time to properly obtain children's views and wishes - to not having control over decision making bodies outside the local authority, to what else or who else might be influencing what children are saying and as such how much weight can be given to them.

Not enough, not enough because of the resource issues. I don't think it is deliberate, but maybe it is not deliberate...but maybe just a sense of not thinking enough ahead.

(Social Worker, Sheila)

They [children] don't have a huge say...I mean I suppose they have a say, again it depends on the age and maturity of the child. It is difficult, I mean I promised \*\*\*\* [child in study] that she would have contact with her sister. That was what she wanted and that was the social work plan. The younger children were going to be adopted



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and the older children were going to go on a PRO and then the court decided that they would not have contact.

(Social Worker, Carl)

Yes, again because you don't know if what they are saying is honest because you don't know whom they are trying to please.

(Social Worker, Jean)

However, what was mentioned most often was this reoccurring theme of the responsibility that the adult has to 'protect' children and if that means going against their views and wishes, then there is no alternative.

When I ask where he [child in study] wants to be, it was always...I want to be with a family, it is only recently that he has started saying he wants to be with his mum. We are taking his views into consideration, but at the end of the day there is no way, we would want him going back with his mum. It is about helping him explain...well we will listen to you, but here is what we have to do and that is what is best for you. \*\*\*\*\* does respond to that, and he seems to have some understanding, but you have to keep repeating it.

(Social Worker, Mary)

I think their views are considered because clearly that is a major step. I mean when you are going for a PRO, there is a section about what children want, so I think it is taken into consideration the younger they are, the harder it is because naturally, they just want to be at home, but this may not be the safe or the best option for them. So I think at times, feelings and wants are taken into consideration and at other times not.

(Social Worker, Jean)

The following offers a case example of how one child in this study had been given the opportunity to articulate a view on a placement change, which she did. However, although these views influenced the discussion, they did not directly impact its outcome. The child clearly did not want to move into a



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foster home, yet the review team took a different view and the child's foster placement subsequently broke down. This raises questions about how if children are to be asked their views and if the decision is different; will they be less invested in the placement? Will they deliberately seek to sabotage the plan? On the contrary, if a child's views and wishes did inform the outcome, would they be more invested in the plan? The following case illustrates this point.

In relation to \*\*\*\*\*, she was moved from a recent placement when it broke down. It was about giving her a choice of would we look at a foster home again, or would we look at a unit. We [the social work department] really thought she should have experiences in a family, and she was going against that and she really did not want that. But we felt that this would be in her best interest and that she needed to have a family, because of her age [she is 12 years – was placed in a family, which subsequently broke down and she was placed back in a short-term unit]. I have met with her since then and she is still saying to me that she is happy on the unit. This is going to be difficult, because she is sitting there saying...she is giving me her views and you have all the professionals with another view, in terms of what is best for her. And that is where it becomes really difficult. But we are going to have to come together again and decide whether this is the best thing for her; maybe this is the best thing for her and maybe we do need to be listening to her saying 'look I am happy here and I don't want to be in a family', this is a really difficult decision to make. I mean do we go against her and set her up to fail.

(Social Worker, Mary)

Later, Mary describes the dilemma that pervades this study when she tries to offer a balanced account of how regardless of children's home circumstances; they most often still want to be with their mums and dads. Consequently, the social worker's challenge is about finding a way to provide children with protection; while allowing the views and wishes of children to be heard.

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I would say more often than not, it would go against their views. Because at the end of the day, the children I work with have come from the most abusive backgrounds and circumstances, but if you ask them they still don't want to be removed from their mum and dad's. And I think if you sit and talk to kids of any age....it is difficult because I think it often not completely against what they want, but if you were to balance it out, it rarely goes their way. You know they are saying I want to do this and we are hearing it, but then we are eventually saying 'I am sorry, but you can't'.

(Social Worker, Mary)

### **Part 3: Obstacles to participation**

On the whole, the decision makers felt that children's views and wishes were significant and that in practice, attempts are made to ensure that the views and wishes of children are obtained and used to inform decisions that affect their lives. However, despite this, it was acknowledged by all of the participants in this phase of the study that several barriers exist in practice, which limit looked after children's capacity to participate effectively – particularly in relation to their permanency plan. Obstacles that were identified here included:

- staff training and experience;
- time and priority given to permanency planning;
- lack of choice – resources;
- loopholes; and
- parental rights.

What follows is a discussion of each of these obstacles individually.

#### ***Staff training & experience***

Staff training and experience was cited by many respondents as being a factor, which decreases their capacity to effectively work with children; in a

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way that encourages children's active participation in their lives. There was a sense that other areas of the work, namely child protection receive greater attention. As well, given the lack of time social workers have to spend time with children developing their own skills and comfort levels when addressing sensitive issues with children; they fail to develop the confidence and knowledge level needed for such specialised work.

We are not very good at training staff and foster carers on direct work with children. There are some real 'stars' who are just natural at it, but in other instances they are not. There is a serious weakness in the priority placed on training for staff around permanency planning, where as the child protection side of things receives a lot of training.

(Resource Development Manager)

Well time, we need more time. Um...as well because you don't have time, you don't get experience. So you probably do not have so much the skills that are needed, because you are not used to doing it. I think that bit is lost [referring to communicating with children about sensitive issues]

(Social Worker, Anne)

### *Time*

Lack of time was identified by many of the social workers as being a significant factor in their inability to provide the children with the proper level of support and information about what is going on.

I just think they [children] need more time, I don't think I, or the department.... they don't get enough time. I don't really have the time to build proper and trusting relationships with the children.

(Social Worker, Anne)

Related to this, one participant identified how they as front-line staff are not always heard by management and that this has an impact on the level of

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service they can deliver to children. Mary recalled how she advised her senior social worker that she could not take on any more cases, or her current ones would suffer as a result. She acknowledges this is a real challenge for senior management, because of staff shortages but feels that it has a detrimental impact on children and resulted in her failure to fully facilitate children's participation.

The position of management is in, they take it up further and they are not being listened to. The staffing implications that we have got here, we are very short staffed. If I could reduce my caseload, I have got 16 right now; to say about 10, I think it would make a huge difference to the kids that I have got. They would be more prepared to move, they would be better supported and even perhaps it could prevent permanency.

(Social Worker, Mary)

We are very short staffed and I know that plays a huge role in why we don't do a lot of the work we should be doing. We should be taking harder lines and moving a lot faster, but we just can't. It is a major issue.

(Social Worker, Jean)

In another instance, a social worker explained how he 'makes the time' to try and ensure the child's involvement as much as possible, but this is clearly outside of his regular working day:

Well, as much as possible in permanency cases. I try as hard as I can and I am sometimes working until 7/8 at night. Is there time, well there is and there isn't, it depends if you make the time. For permanency decisions, this is the most important decision in their lives and they need to be given that time.

(Social Worker, Carl)

Elliot touches on how not only in training, but also in casework child protection is given priority over permanency work. Consequently, less time

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is devoted to permanency work with children and it is more likely to receive less attention when competing with other 'crisis' oriented demands of a caseload.

You cannot, not take permanency planning seriously. But sometimes it is not given the priority it should be in the overall work. Child protection always takes priority over permanency. Social Workers need more protected time for permanency work, other things get in the way and that is just not good enough.

(Sr. Social Worker, Elliot)

### *Resources*

Lack of resources was identified as one of the most significant obstacles to children's participation in decision making; particularly in relation to foster home moves and placement in permanent home [either foster or residential]. Despite a desire to engage children in the planning, there was a sense from the decision makers that they could not do this because they did not have a choice of placements to review with them:

Resources, the departments are aware that we don't have any resources. It is quite difficult, I had to speak to two girls and it was very hard to talk to them about it [placement change], when I knew that we did not have placement options for them.

(Social Worker, Anne)

Consequently when a placement is identified it is often the only option and children will then often learn of the plan after the decision has been made. A theme which the children themselves identified in their frustrations about not being involved in decision making and one which is clearly reinforced by the decision makers here:



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**Anne:** I am off to do that after this meeting to tell a child she is moving. There is no choice. I can offer them a choice, but the reality is you are not offering them a choice.

**Researcher:** What I am trying to discover here, is there a balance? Is it not about giving children decision making powers, it is about giving children a right to have their wishes and views put forward in any given situation. Do you think that kind of balance happens and/or is it able to happen?

**Anne:** No, because for example this child I am just about to go and see, I am sure she is not going to want to move and she is certainly not going to want to move from her school, but she is not going to get that choice because this is the only option for her. So no, there just isn't that balance.

(Social Worker)

### *Loopholes*

All of the decision makers acknowledged the number of stages and systems that they have to move through to get a case to permanency. The stages include: case supervision, LAC reviews, adoption panels, children's hearings, and the courts. These systems were described by many as frustrating and as being a significant factor, which impedes children's participation in the development of their permanency plan. These processes were described as not being child friendly; particularly in relation to the delays caused by the legal system and the preference given to parents' rights throughout the system as a whole.

Well, I guess care plan reviews these things and discuss them, um...I guess the initial conversation happens between yourself and your senior, but I do find there is a lot you have to go through before anything is final. We talk about it at the review meetings, the adoption and fostering panel, then we go to the children's panel as well before we get to the long-term plan, then we have to do our papers, the PRO papers. I think there are so many; well there are too many loopholes in my opinion because we have to go through all those stages.



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(Social Worker, Jean)

Well there are the LAC reviews, the children's hearings and the adoption and fostering panel. Whether you are looking at adoption or long-term fostering you have to go to a panel; but that can be hard to get there. And then of course once you have gotten through all those systems and you think right...the child needs to be freed for adoption or placed on a PRO, you have the court system and that can take up to a year. And by that time, the child could have had several placements and the child is potentially going to be more damaged from moving from short-term carers to the long-term one.

(Social Worker, Clare)

For others, these processes were described as appropriate in that they offer a 'checks and balances' system, where critical decisions about children's lives are taken.

Do not feel they [the systems] are 'hoop' as such, rather I think that permanency planning is a process and this system allows for checks and balances throughout it. Taking children away from their parents is a serious issue, to take parents rights and responsibilities away is not something any social worker would do lightly and this system allows for many experts to be involved in what is the best way forward for a child.

(Social worker, Elliot)

The children's hearing system was singled out by some as being the most problematic loophole. Several of the decision makers described how children's panels do not understand the complexities surrounding permanency planning and this can at times lead to confusion for the child and the case progression.

An honest answer, I think some panel members are really tuned in and know that they can be deceived and other that don't. We need to show panel members that we have tried everything and we have to move towards permanency. Some panels take the view that we just have to give them [parents] one more chance, they are looking at the

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parent and not the child. They need to look at the child's interest first and I think some panel members need to....how can I put this diplomatically, they have a soft spot for the parent. But it is for the child that we are there.

(Social Worker, Carl)

Some panel members don't have a clue about permanency

(Resource Development Manager)

### *Shift to parents rights versus children's rights*

Despite considerable advancements in children's rights, recent human rights legislation [European Convention of Human Rights and the Human Rights Act 2000] entered into law; was identified by some respondents as being an obstacle to for children's effective participation. It was suggested that the balance is more in favour of the parents' rights rather than children's, resulting in the permanency planning process taking much longer and making it more controversial. Both of these factors are identified as having a potentially damaging impact on children. In relation to children's participation; in an earlier discussion, delays and lack of a clear awareness of the direction of a case were identified as reasons why children are not always having their views and wishes heard. Consequently, this apparent shift to parental rights may be an obstacle to children's effective participation.

Human rights legislation has had a strong impact on parental rights, and there has been a shift in the system for freeing children [for adoption or PRO] and it has become more adversarial and consequently, takes much longer to achieve.

(Resource Development Manager)

I know we have to give parents a chance, but at the end of the day, the whole legal process...I mean I think in this case [in this study], someone had the case before me; I have had it for 2 and ½ years. It has taken 2 ½ to 3 years to get her sister adopted and for \*\*\*\* from

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coming into care to permanency that time and it will take another 1 to 1 ½ for that to happen, because the parents are not in agreement, and there is delay after delay with their lawyers. None of the children's needs are at heart; it has all been about their [parents] needs. The whole legal process does not take into account the impact because we are constantly telling the child....that we are going to try and find them a new family, but we know this is going to take a long, long time.

(Social Worker, Carl)

Once again, the children's hearing system was singled out as an obstacle. But in this instance, it was in relation to how children's panel members are sometimes more sympathetic to the parent; rather than the child:

It is difficult, because you get caught up in the children's hearing system and the whole hearing process can be frustrating for us social workers, never mind the poor child that is involved in this. I have been involved in a number of cases where the worst part is the legal process. Now I know we have to go through it, we are guided by how the parents must be given a chance, and they must be given so many chances and we have then actually made a decision that we think is in the best interest of the child, and you try and explain that to a children's hearing and you have members taking different views and different hearings, and you have different panel members taking different views. Sometimes you think it is okay and then you go to the next hearing and you get panel members who are sympathetic to the parents and they believe the parents, but those panel members have actually not read the 7 or 8 volumes of files, so they have actually not read the background reports on the family and they can then say they actually think things have changed, when actually they have not changed for the last two or three years.

(Social Worker, Carl)

## Conclusion

The decision makers confirmed much of what was said earlier by the children and adoption panel members. Despite positive shifts in thinking, legislation, policy and practice – it remains a tremendous challenge in practice to facilitate any meaningful participation for looked after children in

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permanency planning. Despite the good will and hard work of the professionals to involve children, they are challenged by workload pressures, resource factors and systems outwith their control. Finally, and fundamentally to an reoccurring theme throughout the present study – adults struggle to achieve a balance between their responsibility to ‘protect’ children from harmful information and circumstances, whilst trying to facilitate the genuine participation in decisions about their long-term well being and care.

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### Discussion of Findings

#### Introduction

The present study examined how looked after children (aged eight to twelve years) participate in decision making processes leading Parental Responsibilities Orders (PRO) at one Scottish Local Authority. Although there were qualified exceptions, it found that the participation of looked after children in permanency decision making processes was limited. Moreover, it also revealed how looked after children were not consistently involved in other key decisions, related to their permanency plans (e.g. which foster home they live at and/or whether they are going to live in residential or foster care). On the whole, the present study found that despite progressive changes to legislation and policy, reflecting the discourses of children's participation rights, it would appear that significant challenges remain in how these rights are effectively and meaningfully translated into social work practice. Moreover, despite current child care literature, emphasising the importance of early, inclusive and decisive planning for looked after children; the present study found the permanency planning processes at this one local authority, plagued by uncertainties. These 'uncertainties' were found to interact in ways that not only failed to achieve security for children, but also limited their ability to participate in a major decision about their lives. .

As detailed in Chapters Two and Three (Literature Review and Legal Framework respectively), Scottish legislation and policy have shifted in ways which reflect and acknowledge children's rights to active citizenship and

agency. Whilst children remain subject to greater controls and protection than do adults, they are increasingly entitled to have their views and wishes considered in all matters that affect their lives. Chapter Three (Legal Framework) showed how looked after children in particular, possess explicit procedural rights to have their views and wishes considered (subject to age and maturity) in all key decisions about their lives. Yet, the present study has shown that many tensions, irrespective of a child's age and maturity, influence the way in which these procedural rights are translated into one specific area of social work practice – permanency planning with looked after children.

It is well documented in the literature that every child needs consistent and loving parenting throughout their childhood to ensure that his or her personal development and sense of identity is maximised (Steinhauer 1991; Fahlberg 1991; Lowe & Murch 2003; Triseliotis 2002). The benefits of achieving stability for children have been clearly linked to better outcomes for children (Parker et al 1991). Where a looked after child cannot be returned to his or her birth family, a local authority must seek a permanent substitute family that can provide the security needed to support a child's healthy development. As earlier chapters explain, the process through which this goal is achieved for looked after children is called permanency planning. As discussed throughout the present study, an essential ingredient in achieving permanency for looked after children is 'certainty'.

The permanency policy of the local authority, which participated in the present study, states: 'permanency planning is based on the assumption that children need to be following from their parents, or from those who take on the



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responsibility of looking after them throughout their childhood: safe and trustworthy physical care; affection, warmth and love, security and a sense of belonging; stimulation and opportunities to develop skills and relationships; guidance and control; and support in gradual development of self esteem, responsibility and independence’.

Permanency planning is a process that occurs for looked after children over time, beginning with their first admission to care until a long-term plan is legally and physically secured (see Chapter Three [Legal Framework] for a fuller discussion of the long-term/permanency options for looked after children – the present study was concerned with Parental Responsibilities Orders as the legal long term/permanency option). As explained in greater detail in Chapter Two (Literature Review), permanency planning involves a number of informal and formal decision making processes. The meaningful participation of looked after children in these processes was described by participants in the present study as limited, complex and weighed down by uncertainties on many different levels.

Five key areas emerged throughout the present study which illustrates the complexities and tensions of translating the ‘participatory’ intentions of current child care legislation and policy into social work practice with looked after children, particularly where it relates to key permanency decisions about a child’s long-term welfare away from his or her birth family networks. The five areas were:

- The current permanency planning process is unclear and too drawn out for both adults professionals and looked after children;

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- The 'role' played by the Children's Hearing System in permanency planning;
- Adult control versus child protection;
- Confidence and skill level of social workers; and
- Other 'child protection' work taking priority over permanency planning.

The limited participation of the children in permanency planning was not the result of any one of the above areas; rather it appears to be the unintended consequence of how these factors interact in social work practice. Drawing on findings from throughout the present study, this chapter explores each of these areas and discusses how they interact resulting in the limited participation of looked after children in permanency planning. What emerges from this analysis is a sense of uncertainty in permanency planning, clearly experienced by a group of professionals and looked after children. The chapter concludes with a discussion of what looked after children say they want and need in relation to both participating in and understanding the permanency planning processes.

### **1. The current permanency planning process is unclear and is too drawn out for both adults, professionals and looked after children.**

Earlier chapters (Chapters Four and Five [Legal Framework and Adoption Panel & Children's Files] respectively) reviewed the permanency planning processes at the local authority that participated in the present study. In summary, when a looked after child is identified as needing a permanent plan outside his or her birth family at a looked after child review (hereafter LAC review), the case is referred to the Local Authority's adoption panel.

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The adoption panel reviews the case and makes a recommendation, which could be that a child is returned to their birth families or that the local authority initiates the formal legal steps required for either an Adoption or Parental Responsibilities Order (hereafter a PRO). This recommendation then goes to the Agency Decision Maker (of the Local Authority) who either agrees or disagrees with it. If the recommendation is agreed to and if the child is subject to a Supervision Requirement through the Children's Hearing System (all of the children in the present study were), the case must be referred to the Reporter, who is then required to arrange a hearing to both review the Supervision Requirement and give Advice<sup>105</sup>. Following the Review and Advice hearing and if the local authority decides to proceed with the PRO, a formal application is made to the Sheriff Court where the final legal decision is made.

Permanency planning was described by participants in the present study as taking place on two levels - that which is internal to the local authority and that which is external to it. The internal level consists of contacts between looked after children and their social workers, both formal and informal supervision between social workers and their managers, Looked After Children reviews (hereafter LAC reviews) and adoption panel meetings. The external level involves both the Children's Hearing System and the Courts. The present study found that despite the streamlined intentions of legislation and policy, delays and procedures on both the internal and external levels have influenced and limited the extent to which looked after children are

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<sup>105</sup> A review of the supervision requirement and an advice hearing occur at the same sitting of a children's panel.

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able to participate in the decision making processes surrounding their permanency plans.

Chapter Five (Adoption Panel & Children's Files) reviewed relevant sections of the permanency policy (of the local authority who participated in the present study). It demonstrated how the policy reflects the principles of participation and protection, as they are defined and intended by international and national legislation. For example, the policy explicitly states that looked after children should be involved in all key decision making stages leading to their permanent plans. However, despite such a policy, when the professionals were asked about it, responses were mixed. Several were not aware that there even was a permanency policy at this local authority, whilst others acknowledged it may exist but admitted they were not readily familiar with it. This was particularly true amongst the front-line social work staff (see Chapter Seven [Decisions Makers]). The adoption panel members were more aware of the permanency policy; but felt it was out of date, inconsistently applied in practice and that it had little impact on permanency planning practice.

On the whole, the lack of clarity surrounding the policies and procedures related to permanency planning was described by participants in the present study as problematic. According to the adult participants, it contributes to a sense of uncertainty that results in inconsistent practices and needless delays in permanency planning. Some social workers (see Chapter Seven [Decision Makers]) identified the processes associated with permanency planning as confusing, whilst others admitted feeling unsure of what steps to take and

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how they just did what they 'thought' was the right thing, with little or no strategic thinking or direction.

Moreover, and significant to the present study, social workers described feeling unsure of how and when to meaningfully involve children in the various decision making processes associated with permanency planning. In other words, at what stage should a social worker begin discussing permanency with a child – should it be as soon as the child becomes accommodated or should it be once the adoption panel has made a recommendation for that child's permanency? If one begins discussing permanency with a child at an early stage, does this create a further state of uncertainty that child? Yet, legislation, guidance and local policy suggest that discussions about a child's plan should be happening with looked after children as soon as they are accommodated and at each key decision making stage. However, the present study found that in practice, early and ongoing discussions with looked after children about permanency planning are infrequent at best. One of the main reasons for this was the lack of clarity and uncertainty expressed by the social workers and other professionals about permanency planning processes. The professionals in the present study agreed that having a clearer internal policy on permanency planning might enhance their confidence in carrying out this complex area of social work practice, whilst allowing them to considering more effective ways of facilitating children's participation.

The lack of clarity and uncertainty about permanency planning processes described above was also evident in the responses of the looked after children in the present study. For example, none of the children expressed



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any awareness of the adoption panel and its central role in making permanency recommendations and as discussed in Chapter Six (Children's Voices). Furthermore, only one of the eleven children in this present study was clear what his permanency plan was, how it had been arrived at and what role he had played in its making.

It is well documented that one of the key weaknesses of the current child care system is the slow-moving legal proceedings, particularly in relation to securing permanency for children (Lowe & Murch 2002; Monck 2003; and Plumtree 2003). The present study did not quantify the time it takes to achieve legal permanency, rather it focused on the planning processes and the extent to which looked after children participate in these. However, in doing this it found that the lack of clarity and timescales in relation to permanency planning (both before and during formal legal proceedings) had contributed to inconsistent practices and unnecessary delays for children. Moreover, and significant to this present study was how delay exacerbates uncertainty for professionals and children alike - a clear barrier to facilitating children's meaningful participation in the process.

As noted in Chapters Five and Seven (Policy into Practice and Decision Makers respectively) there are currently no statutory timescales for permanency planning in Scotland (prior to official applications being made to the Sheriff Court (see Chapter Four [Legal Framework])). For some participants in the present study, this was a good thing as it allows for flexibility in case planning, but most described this as more problematic. Of the eleven children interviewed, only two were subjects of Parental Responsibilities Orders (hereafter PROs), despite all of the children being



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registered for permanence and the clear plan of the local authority to apply for a PRO. Anecdotal evidence from professionals in the present study suggests that there are several examples of where the permanency planning processes not only took too long but where it was also taking too long to achieve legally secure orders for looked after children. Leaving children to live 'in limbo' in care, whilst experiencing delay, taking no formal action or pursuing multiple and often unsuccessful efforts to rehabilitate them back to their birth families, is not in any child's best interest (Lowe & Murch 2002 and Monck et al 2003). Selwyn and Quiton (2004) argue that despite good intentions many looked after children in the United Kingdom continue to drift in long-term arrangements in the absence of any firm plans. Yet, the key to effective permanency planning is early and decisive decision making – whether it involves accommodated children returning to the full-time care of their birth families or otherwise (McKay 1980; Steinhauer 1991; Schofield et al 2000). A message, which is clearly reflected in the 1998 Adoption and Permanency policy of the local authority in the present study when it states: *'from the moment a child starts to be looked after, efforts will be made to restore the child to his/her birth family, or, to develop long term plans as soon as it is evident that the child's birth family or extended family cannot provide the essentials'* (p.2).

Delays associated with formal legal processes are well documented elsewhere (Steinhauer 1991; Lowe & Murch 2002; and Plumtree 2003), but in the context of this present study other equally significant delays emerged – those which occur before the formal legal process begins. It appears that delays regularly occur in permanency planning at the local authority in the present study, despite repeated references by participants to Rowe and

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Lambert's (1973) seminal study *Children who Wait*. This influential research found that children who had been accommodated for more than six months were less likely to be successfully rehabilitated back their birth families. More recently, others have concluded that once a child has been accommodated for two years, the chances of his or her successful rehabilitation home are very slim (Triseliotis 2002). The permanency policy for the local authority in this present study vaguely defines when the local authority should begin to consider permanency for a child:

Permanent plans should be considered when a child being looked after by the council requires a family who will be his/her family of resource throughout his/her childhood and beyond that into adulthood. The first consideration in planning will be whether the child's own family or extended family can provide a safe home in which the child will receive stability, security and affection throughout his/her childhood. If the family or extended family cannot provide in this way then permanent plans within the timescales which will be relevant to the age and stage of development of the child should be made by the Council. The younger the child the shorter these timescales will be become

(Permanency Policy for \*\*\*\*\* 1998. Section 2, document 11 p. 2)

Although this section makes reference to timescales, it does not define it further except to say that they should be '*relevant to the age and stage of development of the child*'. In the present study, adoption panel members and social workers alike felt it would be helpful to have more clarity and guidance on when a case should be considered for more formalised permanency planning. Several social workers (referred to as decision makers in this present study) described feeling unsure of what steps to take when moving a child's case towards permanency outside his or her birth family.

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For example, when should a case be referred to the adoption panel and what activities need to take place to support this process? In the main, social workers admitted that there was little consistency in permanency planning practice at the local authority, which participated in the present study. Adoption panel members reiterated this, when they consistently cited how there is little consensus of when a case should be referred to a panel and in some cases, it has been too late.

On the whole, participants in the present study described the internal processes for permanency planning in this local authority as confusing and inconsistent. This lack of clarity and confusion appears to have resulted in uncertainty and delay in how permanency planning processes are carried out. Notably, this particular point emerged as a central theme amongst both the professionals and children in the present study. The looked after children demonstrated limited or no awareness of how the decision that they would no longer live with their birth families was made and similarly many of the professionals were equally ambiguous about the processes; revealing their struggles with involving children in things in which they themselves lacked confidence. Consequently, two key factors emerge leading to the conclusion that looked after children's genuine participation in permanency planning is limited at this one local authority. First, the lack of certainty and clarity around the permanency policies and procedures that result in delays and inconsistent practices and second, the lack of confidence felt by the adults professionals in how they engage children in a system, that they themselves lack confidence in.

## **2. The 'role' played by the Children's Hearing System in permanency planning.**

The present study focused on looked after children who had been registered for permanence and for whom the local authority had secured (or had recommended or had made formal application for) a Parental Responsibilities Order (hereafter a PRO) through the Sheriff Court. In exploring the internal processes of the local authority, an external yet significant factor emerged – the role played by the Children's Hearing System in permanency planning for looked after children. In the first instance, because it plays a key part in moving cases towards legal permanency through the Sheriff Courts and secondly, because it appears that in some cases it has been used as a permanency 'route' for looked after children.

The discussion which follows on the Children's Hearing System is relevant to the present study in three respects. First, some participants described the Children's Hearing System as a frustrating and unnecessary step in moving a child's case towards legal permanency, resulting in a further hold-up to a planning process that is already plagued by significant delays. Second, and linked to the earlier discussion, it is an additional example of inconsistent approaches to permanency planning taking within one local authority. And third, the looked after children in the present study expressed considerable discomfort at attending children's hearings, thus directly impacting on their capacity to participate in a key stage of the permanency planning process.

Under current Scottish child care legislation, the Children's Hearing System has a significant role to play in moving cases towards legal permanency.

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When a local authority takes the decision to apply for a PRO on behalf of a child, if that child is on a supervision requirement through the Children's Hearing System (in most cases they will be<sup>106</sup> – all the children in this present study were subjects of Supervision Requirements), then the local authority must refer the case to Reporter<sup>107</sup> who must then schedule a Review and Advice Hearing<sup>108</sup>. At this hearing, a children's panel has two tasks. These are:

- To consider the case and the reasons why the local authority plan to pursue this course of action and to decide whether or not they support it.
- To review the child's supervision requirement and consider whether it should be varied in any way.

The panel then prepares advice for the Sheriff Court outlining its views on the local authority's proposed permanency plan for the child. Although the panel are not making a substantive decision with regards to a child's permanency, they are required to form a view on the suitability of the

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<sup>106</sup> It is only in rare cases that a child could not already be subject to a Supervision Requirement, for example if both parents died and there was no other provision for the child in the birth family network necessitating the local authority to pursue parental rights and responsibilities.

<sup>107</sup> The Reporter is an officer of the Scottish Children's Reporter Administration (SCRA). They receive referrals from any source about children who it is believed may be in need of compulsory measures of supervision (legal intervention in their lives). The Reporter is responsible for determining when and arranging children's panels take place.

<sup>108</sup> The 1995 Act s. 73 Duration and review of supervision requirement (4) A relevant local authority shall refer the case of a child who is subject to a supervision requirement to the Principle Reporter where they are satisfied that – (c) the best interest of the child would be served by their – (i) applying under section 86 of this Act for a parental responsibilities order.



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proposed permanency plan of the local authority (e.g. do they agree that a Parental Responsibilities Order is in the best interest of the child). If the advice of the panel does not support proposed plan, the local authority *should* take this into account before deciding whether not to proceed with the formal PRO application to the Sheriff Court (The Scottish Office 1997). However, it does not stop them from proceeding, but in making a decision the Court is obliged to consider the report from the children's panel. In other words, the input from the children's panel is quite influential on the direction a case takes at crucial points in the permanency process.

Although there was general support for the Children's Hearing System as a whole, in this present study, most of the professionals (both adoption panel members and social workers) described the additional step of an Advice Hearing as being potentially contrary to a child's best interest and also, an unnecessary loophole in the permanency process. There were two key reasons for this. First, according to the majority of professionals in this present study, members of children's panels do not fully understand permanency planning and consequently will often make decisions<sup>109</sup> or give advice, which interferes with progress already made by the local authority. For example, several social workers cited cases where the local authority had been gradually reducing a child's contact with his or her birth family in preparation for permanency (outside his or her birth family), whilst a children's panel then increases it at the review and advice hearing.

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<sup>109</sup> As noted the children's panels are required to review the child's supervision requirement, in addition to giving advice to the Sheriff on the Local Authority's permanency plan for the child. As such, they have the option of altering the supervision requirement, which could run contrary to the plan, which the authority has for a child.



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The majority of professionals in the present study argued that most children's panel members do not fully understand the complexities of achieving permanency for looked after children. Accordingly, fundamental concerns emerged in the present study about the key role the Children's Hearing System has in moving a case towards permanency. Moreover, and similar to the earlier discussion on the length of time permanency takes to achieve, attending advice hearings was described as a time consuming loophole which further contributes to needless delays in permanency planning for looked after children.

The tensions and general mistrust described by the professionals in the present study echo similar themes to those which lead to the Fife Inquiry<sup>110</sup>. That Inquiry was initiated following the refusal of the Fife Local Authority to accept and act upon a report published in 1988 by the then Social Work Services Group (SWSG).<sup>111</sup> The SWSG report identified a serious loss of confidence on the part of the local children's panel; precipitated by the child care policy adopted by the Fife Council in 1985 (Kearney; 1992; Lockyer & Stone 1998). In short, the policy under scrutiny advocated: 1) the importance of keeping families together; 2) the thorough investigation of all alternatives before placing children in local authority care; and 3) rigorous care planning to ensure links continued with birth families where children were admitted to care for any period of time. Although in principle, this approach had wide

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<sup>110</sup>The Fife Inquiry was the longest running inquiry in the field of child care in the United Kingdom, lasting three and a half years. It was conducted by Sheriff Brian Kearney and its' report – *'The Report of the Inquiry into Child Care policies in Fife'* was submitted to parliament in 1992.

<sup>111</sup> SWSG became the Social Work Inspectorate and in April 2005, became the Social Work Inspection Agency (SWIA) and is an 'agency' of the Scottish Executive.

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support and was not at odds with trends and practice elsewhere; it was the strict way in which it was implemented by the Fife Social Work Department that was brought into question (Tisdall 1997; Lockyer & Stone 1998). Sheriff Kearney's report concluded that the "*rigid and dogmatic manner*" (p.616) in which the policy was implemented by the Social Work Department alienated other vital partners involved in child care; namely the Children's Hearing System, education and health. The conclusions of the report both clarified the law and made specific recommendations aimed at improving the relationship between key agencies and the Children's Hearing System (Kearney 1992; Lockyer & Stone 1998); resulting in important changes to child care policies and practices in Scotland.

Broadly, the conclusions of the Fife Report re-affirmed the need for the external scrutiny provided by children's panels regarding local authority planning for children. In particular, it found that social work reports to children's panels must give more detail on children's life circumstances and where appropriate, children's panels should be invited to consider the long-term interests of children (1992: pp. 569 & 618 respectively). Furthermore, the reports conclusions led to a key change brought about by the Children (Scotland) Act 1995. Sheriff Kearney had recommended that representation of the area Children's Panel should be mandatory when Local Authorities were considering policies and resources that would affect children. This is reflected in Section 19(5) of the 1995 Act which requires that the 'Chairman of the Children's Panel' together with the Principal Reporter and others are consulted when Local Authorities are planning for children. It would appear that views expressed in the present study once again raise important

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questions about the relationship between Social Work Department and Children's Panels and its impact planning for children.

As discussed in Chapter Four (Legal Framework), there are four main legal options for permanency for looked after children requiring long-term care outside their birth families under the Children (Scotland) Act 1995 (hereafter the 1995 Act). The options are:

- Return home; or
- Be made the subject of a residence order under s. 11 of the 1995 Act, naming individual carers and giving them parental rights and responsibilities; or
- Be made the subject of a parental responsibilities order (PRO) under s. 86 of the 1995 Act, giving the local authority parental rights and responsibilities; or
- Be adopted, with or without a freeing order first.

The present study was concerned with looked after children whose legal permanency 'route' was a Parental Responsibilities Order (hereafter PRO's). PRO's have been described as a 'draconian' option, because they take away all parental rights and responsibilities except for the right to consent to or refuse adoption (Plumtree 2003). Indeed, national guidance and regulations for the 1995 Act emphasises the significance and potential intrusiveness of PRO's when it states: *"depriving a parent of his or her parental rights and responsibilities is a very serious step and a local authority should apply for an order only where it is clearly in the child's best interest"* (Scotland's Children 1997 Volume 3. p. 60). As well, there are legitimate and well documented

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concerns about using a corporate body as long-term parent body for a child (Schofield et al 2000; Lowe & Murch 2002). Consequently, it is not an action which is taken lightly and as previous chapters have shown, the Local Authority in the present study have a series of systems in place which guide how decisions are taken before applying for a PRO.

Whilst exploring the decision making processes associated with PROs, it emerged that there may be some instances (either intentionally or not) where the Children's Hearing System was being used as a less intrusive option than application for a PRO. This position appears to stem from the 'no order' principle of the 1995 Act, which is defined as:

*Subject to subsection (8) below, in considering whether or not to make an order under subsection (1) above and what order to make the court –*

*shall regard the welfare of the child concerned as its paramount consideration and shall not make any such order unless it considers that it would be better for the child that the order is made than that none should be made at all; and...*

(The 1995 Act, s. 11 (7) a)

The national guidance and regulations for the 1995 Act expanded this when it outlined a series of questions that should be considered by a local authority before applying for a PRO. It includes particular reference to the children's hearing system:

*Where a child is subject to a supervision requirement, could variation of the conditions of the supervision requirement meet the child's immediate and long-term needs or does the need to attend a children's hearing at least annually mean that supervision creates needless instability and uncertainty for the child?*

(Scotland's Children- The Children (Scotland) Act 1995 Regulations and Guidance. Volume 3 Adoption and Parental Responsibilities Orders p. 61)

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There were two scenarios where participants in the present study identified the Children's Hearing System as a 'permanency' option. First, a Supervision Requirement through the Children's Hearing System was described as a *less intrusive* option than a Parental Responsibilities Order, particularly in those cases where it was felt that the birth parent would not cause disruption to a child's long-term foster (or residential) placement or at children's panel meetings. Second, there was some evidence of children continuing to be looked after and accommodated under a Supervision Requirement, despite a clear decision of the Local Authority (in the present study) to pursue a PRO. Where this was the case, lack of time to complete the administrative responsibilities associated with formally applying for the PRO was cited as the primary reason as to why it was yet to happen. Given the child's placement was 'secured'<sup>112</sup> by a Supervision Requirement, other more competing matters on the worker's caseload took priority. Consequently, it is possible that some looked after children are remaining on Supervision Requirements through the Children's Hearing System, even where a permanent option through a PRO has been recommended. Exploring this in greater detail went beyond the scope of the present study; however, this appears to be an important issue worthy of further investigation.

Using the Children's Hearing System as a route to permanency (either intentional or not) appears to contradict what it was designed to achieve.

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<sup>112</sup> A child's placement is never permanently 'secured' by the Children's Hearing System, as at any time the Social Work Department can bring a case back for review and a parent or child can do anytime three months after the order is made – at which times the Supervision Requirement could be altered.



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The Children's Hearing System was deliberately set up to make and support short and medium term arrangements, not permanency plans (Norrie 2000; Plumtree 2003). The review structure of the Children's Hearing System is such that when a child is the subject of a Supervision Requirement, their case must be reviewed annually, but in some cases more frequently than that<sup>113</sup>. A child and all relevant persons are required<sup>114</sup> to attend all hearings. At these reviews, the panel has three options in its decision making – (i) renew the supervision requirement unchanged; (ii) renew the supervision requirement with some changes; or (iii) discontinue the supervision requirement. The child and/or relevant person can appeal every review decision to the Sheriff Court<sup>115</sup>. Given the review and appeal structure of the children's hearing system, it is therefore possible that hearings could occur every three months. This could result in increasing the anxiety and uncertainty for children, families and those making plans for them (Plumtree 2003).

The 1995 Act was constructed to ensure that the child's needs are placed at the centre of any decision making. One of its central features is that children need certainty, and that all decisions should be taken to enhance their chances of a stable placement in a permanent and safe family (Monck et al 2003). This position is widely supported by years of research, which confirms the importance of stability and security for children (Steinhauer

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<sup>113</sup> Social Work can request a review of the Supervision Requirement at any time; the child and/or relevant person (s) can request a review anytime thereafter three months of the making of the requirement. The 1995 Act s. 73 (4) & (6).

<sup>114</sup> As noted elsewhere a child has a right and a duty to attend their children's hearing although they can be excused from doing so, if it a panel agrees that it would not be in their interests to be present.

<sup>115</sup> The 1995 Act s. 51 (1).



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1991; Hill [ed] 1999; Schofield et al 2000; and Thomas 2000). Having to return even annually (and in some cases more often) to a children's hearing to have a child's placement and status in care reviewed, surely does not afford children the sense of security and certainty intended by the 1995 Act?

Finally and perhaps most significant to this present study, the majority of children described their experiences of attending children's panels as difficult (see Chapter Eight [Children's Voices]). Four key areas emerged as the children described their experiences at children's panels. In the main, the children in this present study:

- Did not like being asked lots of personal questions by strangers;
- Did not like speaking to strangers;
- Did not like hearing bad things said about their families;
- Did not always understand what was going on at the children's panels; and
- Did not feel input on their parts would have any bearing on the outcome of the panel.

The views from the children in the present study broadly correspond with other studies looking at children's involvement in Children's Hearing System. Hallet and Murray (1998) argued that children were not consistently involved in the decisions of the children's hearings. That particular study found that in seventy percent of cases, the child had expressed no view and/or had made minimal responses to any questions posed to them. McGhee (2004) reports how children's uneasiness at attending children's hearings has been identified by a number of different studies (see Willock 1972; Howells et al 1996; Hallet & Murray 1998; and Griffiths & Kendall

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2000). In particular, these studies revealed similar tensions about children's participation found in the present study. For example, although children see their participation as important, they remain anxious about being present, being asked difficult questions, and hearing damaging things about their families.

This discussion on the role of the Children's Hearing System in permanency planning raises key questions related to the participation of looked after children in the process. First, there is an apparent lack of trust between the professionals of the local authority and members of the children's panel. In the view of the majority of professionals interviewed in the present study, children's panel members do not understand the complexities associated with permanency planning. Yet, the children's hearing system clearly has a key role to play in moving children's cases towards permanency. Furthermore, there were mixed views about the appropriateness of the children's hearing system as a child's 'permanency' option, and indeed cases where by default it was. Although these are relevant and important issues, they each require deeper attention beyond the scope of this present study. However, the two significant points to draw from this discussion are the discomfort expressed by the children in their capacity to participate in this crucial stage in permanency planning and the perceived lack of understanding about permanency on the part of members of the children's panel.

### 3. Uncertainty: protecting children or control from adults?

One of the central issues to emerge throughout this present study as a persistent factor that constrained children's participation in permanency planning was the uncertainty associated with limited resources. Although resources were defined broadly and included both staff time spent working directly with looked after children and the lack of choice in long term foster home options; this next section will focus on the latter. A later section will expand on the issue of staff time dedicated to permanency planning. Moreover, this section will also explore the fundamental role that adults have in determining the extent to which children are enabled to participate in permanency planning and how uncertainty also influences this.

Members of the adoption panel and social workers alike identified the lack of suitable long-term foster carers as being as being a significant barrier to involving children in decision making processes. Social workers in particular, described feeling anxious about involving children in what they identified as an 'uncertain' process. They described feeling unsure about how and when to involve children in discussions about permanency plans when they themselves, were unclear of what the options for the child actually were. Although social workers clearly wanted to discuss the idea of a prospective 'permanent family' with children, they felt unable to do this as the reality was often that there was no 'permanent family' identified or that only one potential family had been identified (regardless of what would be a good match for a child or what a child's view on any potential family might be). For example, social workers questioned how they can rightfully ask for a child's views on a prospective long-term family when the reality is that

there is little or no choice of whom or where that family would be? Meanwhile, social workers are expected to develop a child's permanency plan regardless of the uncertainties described above.

One particular case from this present study offers a clear illustration of this dilemma faced by many social workers, as described above. Two children (siblings) both revealed to this researcher how they were very happy in their current placement and despite being told that it was not intended to be a long-term placement, they did not want to move and they had expressed this wish to both their carer and social worker. During the interviews with these children's selected 'decision maker' (their allocated social worker), it was revealed that the local authority were actively seeking a long-term foster carer for these children and that they would not be able to stay where they were, regardless of the children's views and wishes (their current carers are only short-term). Furthermore, it was also possible that these siblings would be placed separately because of difficulties finding a long-term carer who was able to take both children. The children's social worker described herself as hesitant to discuss the prospects of a long-term family (or as the case may be two families) and an impending move with these two children as it would only engage them in a process which was uncertain and limitless in terms of the amount of time it could take. In the meantime, these two children are developing relationships and attachments where they are, whilst voicing insecurity about their futures, and expressing a wish to stay together in their current home. Moreover, they are clearly not being actively engaged in discussions about their future plans. In this particular case, the social worker made an intentional decision to exclude the children from the plans for their

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move to a permanent family. However, this did not appear to be about a lack of respect for children's views and wishes. Rather, it appears to be about a hesitancy to engage children in an uncertain process and raise their expectations and anxieties about something that may or may not happen.

The majority of children in this present study believed that by the time they learned of key decisions (e.g. foster home changes), the outcome had already been determined. This was particularly true of a decision that they would not be returning to the full time care of their birth family, as most described being told this was the plan, rather than being part of any discussions about it. Buchanan et al (2001) describes any efforts to facilitate a child's participation as a 'sham', if it is done once a decision has already been made. Yet, as noted in Chapter Six (Children's Voices), only one of the eleven children in this present study felt he had any input into the decision that he would not longer live with his birth family. Overwhelmingly, the children in this present study felt that the adults around them made the key decisions affecting their lives and that any input from them makes little or no difference to the outcome, particularly as most often they learn about decisions after they have been made. A study as far back as 1983 drew a similar conclusion – that looked after children feel their input into meetings has little or no impact on the outcomes. It found that despite being involved in meetings, most children felt the adults pre-determined and controlled the decisions of meetings and their involvement was inconsequential. A young person from Stein & Ellis' study (1983) described their experience of attending review meetings:



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I feel that the whole review system for me is a total façade. Although the decisions taken at reviews are carried out, these decisions occur through the wishes of adults involved, whereas I am merely a bystander.

(from Stein & Ellis 1983 in Thomas 2000 p. 86)

Research on the extent of children's involvement in permanency planning is limited. However, with increasing attention on children's rights and the introduction of statutory duties to consider looked after children's views and wishes in all decision making a number of related studies have been done (see Montgomery 1992; Alderson 1995; Marshall 1997; Thomas 2000; Reugger 2001; Thomas & Beckford 2001; and Macaskill 2002). Overwhelmingly, although there is increasing emphasis placed on the need to consider the views and wishes of looked after children in all planning decisions, professionals continue to play a key role in controlling the extent to which this happens (Hoggan 1991; Sinclair 1984; Gardner 1985; Gardner 1987; Marshall 1997; and Thomas 2002). Similar to these aforementioned studies, the present study found that adults play a key role in both defining and enabling the extent to which children are involved in the formal decision making forums (e.g. meetings) where permanency plans are developed.

Generally, the present study found that the current structures and forums where permanency decisions developed are not designed in ways that invite and facilitate the active participation of children. The professionals identified four key forums in which 'formal' permanency decision making takes place. These include consecutively: looked after children reviews (LAC reviews); adoption panels; children's hearings and finally the courts. Whilst exploring children's participation in these forums, four key issues emerged. First, there



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was considerable disagreement as to whether or not children should be physically present at meetings (particularly in the case of adoption panels). Second, the meeting formats were described as adult oriented and not structured for children. Third, if children are not present, is the presentation of their views and wishes by the allocated social workers and carers sufficient? And last, overwhelmingly the professionals described a sense of duty to protect children from both the uncertainty of the process and the potentially distressing information being discussed at meetings, as well as the emotional situations that could erupt during meetings.

As noted in Chapter Five (Policy into Practice), looked after children do not attend adoption panels at the local authority in this present study. The members of the adoption panel interviewed had mixed views on whether this was the right approach to practice. Reasons ranged from the need to have such an adult forum (adoption panels) for social workers and their managers to come and openly discuss case management issues with professionals not directly involved in a case, to a general discomfort with the idea of having children present. However, children do attend looked after reviews and children's hearings, both of which (as noted earlier) have key roles to play in the permanency planning process.

Irrespective of whether children should or should not attend meetings, the structures and formats of both LAC reviews and children's panels for inviting children's participation was questioned by all the participants in the present study. Most adult participants felt that large rooms with several strange adults sitting at tables was neither an inviting environment for children, nor one conducive to inviting children's participation. Yet, this was

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exactly how professionals in this present study described LAC reviews and children's panels. The children verified this when they described not liking being rooms with lots of people that they did not know and having these 'strangers' ask them personal questions, they have been asked many times before. Furthermore, most of the children in the present study who had attended meetings found them 'boring'. These findings mirror what the looked after children in Thomas's (2002) study thought. That study considered looked after children's experiences of reviews meetings (in England). It found that children did not like: everyone sitting looking at them; everyone talking about them; people interrupting; people not listening to them and speaking in front of a lot of adults. Similarly, Horon & Dalrymple (2003) found that the potential empowerment of children was minimised by adult 'decision-making' forums, such as traditional meeting formats.

Moreover, the looked after children in this present study did not like the idea of having to miss school to attend meetings. They recalled situations where they have missed out on fun school trips or activities because of meetings and consequently they were left feeling resentful because they 'had to be at a meeting'. Simultaneously, however, they expressed a desire to be at meetings where their lives were being discussed and they did not like the idea of people talking about them when they were not present. This leads into the next section on what do children want in terms of participation.

Although the professionals in the present study shared a commitment to ascertaining children's wishes and feelings alongside securing their best interest, they appeared to attach greater significance to their judgments of

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what was in children's best interest. This echoes other studies which also found that the 'welfare principle' dominates decision making and how professionals define 'protecting' looked after children as a higher priority to facilitating children's participation (James et al 2002). This 'judgement' includes protecting children from harmful processes (e.g. meetings) and harmful information. The present study has not argued against this or identified fault with that, rather it has suggested that children's participation as it is described by rights discourses, current legislation and policy is restricted because of the greater significance that adults attach to 'protecting' children's welfare over 'facilitating' their participation. On the one hand, the professionals in the present study conveyed a belief that looked after children should be involved in decisions about permanency plans but on the other, there appeared to be a stronger and more pervasive sense of responsibility to protect them from potential harm – physical as well as emotional.

Alderson (2004) argues that in developed societies children are 'protected' so much that they seldom face the dangers that give them the chance to show if they make complicated decisions. She speaks of sealing them into a 'risk free world'. Alderson (2004) further argues that this is particularly true for looked after children in public care given the standards and the position of potential scrutiny from outside inspection, there is a real emphasis placed on protecting children. Yet, as noted here, achieving a resolution to this inherent tension is complex in actual practice.

#### **4. Confidence and skill level of social workers**

The adoption panel members in particular, identified the confidence and skill levels of the social workers as central to consider when examining the participation of looked after children in permanency planning processes. Social workers are the link between the child and the agency (in this case the local authority) and consequently, they have a key role to play in facilitating children's participation on many different levels. Allocated social workers are responsible for having regular contact with looked after children to discuss their progress and care plans. In doing this, they are required to obtain the views and wishes of the children and incorporate these into any plans for the child. Despite this, Bannister (2001) and the present study found that parents, carers and social workers remain the main source of information on children's views and wishes for formal processes, despite the intent of both the Children Act 1989 (England and Wales) and the Children (Scotland) Act 1995, which emphasise how adults should ascertain the views and wishes of children from children themselves.

As noted elsewhere, there are various meetings, which children attend and they are given the opportunity to speak directly to their views and wishes. In these instances, it would normally be their allocated social worker who would prepare them for the meeting – where the child would have the opportunity to speak to other adults (either members of the LAC reviews or children's panel members). The professionals in the present study identified that doing this (preparing children for participation) well is a skill, which for some social workers comes naturally, while for others is more of a struggle.

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For example, in Sylvia's case (aged eight), she told me how her social worker skilfully prepared her for her first outing to a children's panel. She recalled how she and her social worker drew pictures of what the room would look like and how many people would be there. They identified who she would know and would not know from those in attendance (e.g. she would know her mother and father but not the children's panel members). Her social worker then took her to the children's hearing centre where she was able to meet some of the Reporters (by chance this included the Reporter who would be facilitating her case) and see the room where the panel would take place. She said her social worker reviewed with her what kinds of questions she might be asked and allowed her to rehearse how she might respond. When it came to the actual hearing day, she said she was nervous but felt prepared and was able to speak openly about her views and wishes. This was the exception in the present study, as other children recalled feeling unprepared and confused before, during and after meetings. However, clearly this kind of preparation takes time, skill and a grounded relationship between a child and their allocated social worker. However, as the next section will reveal in greater detail, the social workers in the present study felt severely constrained in their ability to spend quality time working directly with the looked after children on the caseloads. Moreover and alarmingly, it would appear that other areas of child protection work continuously take priority over permanency planning with looked after children in local authority care.

At the local authority who participated in the present study, a 'children's rights officer' can be called upon to support any looked after child before and during meetings. A child can request this support or their allocated social



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worker can make a referral. The children's rights officer can spend time with the child independent of the social worker. He or she can speak on behalf of the child (where asked to do so by the child) or he or she can support and encourage the child to take forward any issues both outside and during meetings. However, none of the children in this present study identified the children's rights officer; rather they named their social worker as the one they wanted support from. It is worth noting that the local authority in the present study recently appointed a second children's rights officer whose remit is to ensure that all looked after children, subject to a parental responsibilities order, are visited at least once annually. Despite this being a positive move, it only guarantees one annual visit (although if the child requests more, attempts will be made to accommodate this) and it occurs after the PRO is in place and the planning processes are complete.

Where children do not attend meetings, other key professionals (e.g. members of the adoption panel) who participated in the present study, stated how they relied on social workers' presentations of children's views and wishes (both written and verbal reports), in forming recommendations. This was particularly true of the adoption panel as children do not attend at the local authority in this present study. Consequently, they rely entirely on what the social worker has written in the Form E's and what they deliver verbally at the meeting to get a sense of the child's views and wishes. The adoption panel members interviewed in this present study voiced considerable scepticism as to whether or not they were genuinely hearing the views and wishes of the children, as opposed to the 'opinions' of the social workers. Equally, the social workers (decision makers) identified how they



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struggle at being confident in their ability and capacity to accurately portray the child's views and wishes to the panels. Although there are mechanisms (e.g. forms to be filled out by children in advance of the meeting), the professionals in this present study questioned if this was adequate and wondered if they are genuinely hearing the views and wishes of looked after children when making such significant decisions about their lives and well-being.

Findings here broadly correspond with other studies. For example, Tisdall et al (2003) conducted a feasibility study titled '*Voice of the Child*' under the Children (Scotland) Act 1995, which examined how to best conceptualise and examine how decision making in children's lives took due account of their views. That particular study concerned itself with Part I of the 1995 Act. Although this present study focuses on Part II (permanency planning for looked after children) some of the findings from the Tisdall et al (2003) study are relevant here. '*Voice of the Child*' was informed by a series of focus groups with children who had experienced parental divorce and separation. It found that none of the participating children had their views formally considered in court proceedings either by independent legal representation or by any other mechanisms. Similarly, Rowe and Murch's (2002) study found that only 32 % of children had their views and wishes taken into consideration when decisions were made about their permanency plans.

### **5. Other 'child protection' work taking priority over permanency planning**

As established earlier in this chapter, permanency planning is a complex and lengthy process involving a number of different stages, each with associated

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administrative tasks. However, when discussing time devoted to permanency planning with the social workers in this present study, two significant issues emerged that clearly impact on the extent of looked after children's participation in permanency planning processes. First, there was a reluctance (amongst the social workers) to engage looked after children in such an emotive and complex process, when they do not have sufficient time to support the children throughout it. And second, the time needed to complete the administrative and paperwork requirements associated with permanency planning (e.g. form E's, LAC reviews, referrals to adoption panels & children's hearings and PRO paperwork) was not always prioritised in terms of other casework demands, resulting in delays in both developing and securing legal permanency plans for children; and significantly – working with children to facilitate their participation.

As noted elsewhere, all of the looked after children in this present study identified their social workers as being the key person responsible for the decision that they would no longer live with their birth families. Additionally, they all cited their social workers as being an important person in their lives and as being the one that they wanted support from when trying to understand their life circumstances and long-term plans. Despite this, most of the children described not spending as much time with their social workers as they would like. Equally, the social workers described feeling very limited in their time available to spend working directly with children talking to them and helping them to understand and make sense of their circumstances and significantly to fully elicit the children's views and wishes about their permanency plans.

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The children in the present study most often described themselves as confused, unsure and mistrusting of the reasons why they longer living with their birth families – strongly suggesting they are not benefiting from regular and quality contacts with their social workers. When the looked after children were asked for their understandings of why and how it was decided that they would no longer live with their birth families, responses like *"I don't know"*, *"I am not sure"*, *"I can't remember"* and *"I really don't know"* were most commonly cited. Others demonstrated some awareness of possible reasons, for example *"my social worker has told me that I am not going back to mum and dad's...I know that, she said I can't go back in case something happens to me"*. Others questioned the reasons given and in some cases, they did not believe the reasons given and expressed anger and resentment about them. For example, *"my social worker says my mum is not able to care for me. I think she can, they say she is not able and I really don't have any choice, but I don't agree"*.

The quotes expressed above (most articulately by the last child) highlight a very complex, but not uncommon dilemma for social workers emerging from the present study. Can children be meaningfully involved in discussions about the difficult circumstances of their birth families, which led their removals from home? Without the details or indeed if factual circumstances are censored for a child, can he or she really express a meaningful view on decisions about their care and well-being? Yet, how do social workers (and other professionals) manage professional assessments of a child's birth family alongside that child's own construction of his or her family, which may and often do differ? Clearly, this represents a conflict for social workers

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seeking to uphold obligations to protect children, whilst facilitating their participation in what are often painful and difficult decisions.

Eekelaar (1994) argues that in attempting to reconcile tensions, such as the one mentioned here, the best interest principle should accommodate a child's opportunity to determine what their best interests may be and any expressed view should be permitted to influence the outcome of any decision "*subject to the condition that it is compatible with the law and interests of others and, more controversially, is not contrary to his or her self interest in terms of physical or mental well-being and integrity*" (in Ackers 2000:167). In other words, respecting children's participation rights is not solely about granting decision making power in all instances, but it is about giving children the opportunity to express views based on informed positions (irrespective if these views differ from adults). Yet, this in itself does not solve the dilemma of what adults do and do not tell children about the difficulties of their birth families, nor does it guarantee that children will accept what detail they do hear about their birth families. Moreover, the child's position is not only informed by what they are told by professionals; but more persuasive is what they believe, remember themselves and/or indeed remain loyal to. Perhaps this is not a dilemma which cannot ever be fully solved, rather one that must be managed skilfully by social workers and other professionals. Crompton (1980) stressed the need for children to know the truth about their lives and to be supported in expressing their views. In saying this, she emphasised the importance of strong relationships between social workers and children and the need for careful attention to settings in which children are communicated with about difficult and sensitive areas of their lives.

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Indeed, there were two exceptions, where children were able to express clear understandings of why they no longer lived with their birth families and why they would be growing up in foster care – both with acceptance of why this was. Ironically, they were the oldest and the youngest participants in this present study. Eight year old (Sylvia) was able to articulate that her parents had significant personal difficulties, which interfered with their ability to care for her full time. She understands and accepts that it is safer for her to continue living in foster care until she is at least sixteen and that she will have a visiting relationship with her mother, father and siblings. Bryan (aged sixteen), was clear that his birth parents' lifestyles would not have been safe for him as a child and that growing up in care has been healthy for him. However, three key factors were present in both Sylvia and Bryan's cases that were not evident in other cases considered in this present study. First, these two children were currently living with the foster carers where they were first placed with upon their first reception to care and their carers had both made a long-term commitment to them. Secondly, they had a solid and long-term relationship with their social workers and they reported seeing their social workers on a regular basis. And lastly, they accepted what adults had told them about their parents' difficulties and how this had interfered with their rights to grow up in their birth family.

If adults are to work effectively with children and facilitate their meaningful participation in any process, it is fundamental that they understand children's own perceptions of life experiences (Fahlberg 1991; Thomas 2002). Thomas (2002) in his study *Decision Making and Child Participation* found that children communicated best with those people with whom they had good



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relationships. For example, the children (in Thomas's 2002 study) who had a strong relationship with an adult 'figure' were significantly better prepared for meetings and other relevant discussions. Moreover, those same children felt more confident in contributing to decision making processes about their lives.

Where a social worker (or other adult) is involved with a child over a period of time, they will have the opportunity to develop a relationship and understanding of the child's worlds, based not only on talking but also observation. Schofield (1998) describes how in ideal circumstances, adults would spend time with children and observe their behaviour in a variety of settings. Schofield (1998) and Reugger (2001) report how a social worker understands of a looked after child's life is greatly enhanced by both talking to and observing him or her. Yet at the local authority in the present study, it would appear that social workers are limited with the amount of time they have to spend with the looked after children on their caseloads – despite the children very clearly attaching great significance to their relationships with their social workers.

Research has consistently shown that children are able to consider what their needs are and can usually communicate these needs, if practitioners have the time and develop the skills to listen to them (Butler & Williamson 1995). Butler and Williamson (1995) found that when children were asked about 'harm' they have experienced, most of them had strong views about their needs and the way in which they could be met, but not without professionals creating the right atmosphere within which this emotive dialogue could safely happen. In other words, if looked after children are to



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genuinely participate in decisions about their well-being and care, social workers (or other key adults to the children) must be given the space, support and priority to establish, maintain and foster relationships with children.

Alongside the limitations on staff time needed to work directly with looked after children was the issue of time needed to complete the administrative tasks associated with permanency planning. As noted, there are a number of meetings and reports that need to be completed as a case moves towards permanency. The social workers in this present study reported that completing these various tasks was demanding and at times, dominated their work. Moreover, it limited the time they had available for direct work with children and families. For example, one social worker told me that because of the demands on his time during the day, he often saw the children on his caseload at night outside regular working hours. Ironically, this was Sylvia's (aged eight) social worker. She was the one child in the present study that appeared to have the greatest understanding of her life circumstances.

Similar to Lowe and Murch's (2002) study, the present found that factors such as excessive workload pressures, inadequate training for social workers and lengthy chains of command (in other words – decision making processes) had resulted in unnecessary delays to securing permanency for looked after children. Taking it one step further, the present study revealed how these factors also interact in ways that limit opportunities for looked after children to genuinely and fully participate in permanency planning processes.

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Furthermore, other demands on staff time have also resulted in delays to achieving legal permanency. For example, in one case the child had been registered for permanence, the local authority agreed to the plan, and the children's panel agreed to the plan of pursuing a PRO for a child but the formal application was yet to happen. According to the social worker in this case, because the child was 'securely' placed; completing the required paperwork for the PRO was overshadowed by other more pressing child protection demands on her caseload.

It would appear that permanency planning – both in how children are prepared for it and the planning and administration associated with it – is not always prioritised and that more urgent child protection matters often take precedence over this equally important area of practice. Berridge (1997) argues that child care legislation and policy in the United Kingdom remains structured in ways that require social workers to prioritise child protection, often over the provision of welfare based services and support to children and families; including the provision of service and support to children who are looked after and accommodated. Spratt (2001) furthers this in his observations of how current legislative and social work frameworks are driven by investigations of harm, rather than understanding and addressing that harm in the context of difficulties experienced by families. One of the consequences of this appears to be that some areas child welfare practice, such as permanency planning are often given less priority.

Although the majority of professionals here expressed a desire to spend more time with looked after children and to focus more on their permanency needs, they acknowledged how it is often these two areas of practice that

receive the least attention. Colton et al (1995) argued that whilst many social workers would support a move towards more welfare based priorities, in practice they remain aware that this may leave them vulnerable to criticism; if urgent child protection matters were to be retrospectively judged as being inadequate. Although specific questions about this issue were not pursued in the present study, implicit messages from the professionals suggest a very real struggle with prioritising permanency work over more pressing child protection matters. Parton (1985) argued how policy and practice orientations are inextricably linked to political climates and unfortunately, there continue to be examples of situations where children have been seriously harmed and indeed killed, where statutory services failed to protect them (see the Victoria Climbié Report and Caleb Ness Report both from 2003). Reports such as these aforementioned ones reinforce both public and political emphasis protecting children from harm. This is not to suggest this is wrong in and of itself, but rather it is to wonder if because of this social and political context; other equally important areas of practice for children (such as permanency planning) for promoting children's welfare are given less priority over more immediate child protection concerns?

### **What do children want?**

All eleven children in the present study were explicit in saying that they wanted to understand what was going on in their worlds, even if they could not always control the course it took. This echoes what Marshall (1997) found when young people were asked about their involvement in situations where there was either indecision or conflict. In that study, young people said they would be '*confused, angry, stressed out and rebellious*' if they were

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excluded from discussions and not helped to understand why certain things happen. As one young person put it, being involved in decisions and being realistic about what your options are will help to *"prepare you for when you were 16 or 17 and had to make decisions for yourself"* (1997 p. 73).

Sinclair (2004) argues to achieve effective participation, children need to believe and have good reason to believe that their involvement will make a difference to the outcome. However, in the present study, there was little or no evidence from either the children or the professionals that even when looked after children were involved decision making processes, they had any significant impact on the outcome.

This present study found that that looked after children regarded their social workers as being the key figure in their lives, responsible for making key decisions – in particular the decision that they would no longer live with their birth families. Moreover, adoption panel members and the social workers themselves reported how the allocated social workers play a key role not only in facilitating children's participation, but in being the 'voice' for children when they are not present at crucial decision making forums. Given this, it was important to understand from the looked after children themselves what they wanted and needed from their social workers as that key person responsible for facilitating their participation.

The findings of this present study broadly correspond with other studies that considered what looked after children wanted and valued in their relationships with their social workers. For example, Butler and Williamson (1994) found that children wanted their social workers to be available and

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accessible, to be non-judgmental and non-directive, to have a sense of humour, to be straight-talking, they wanted to trust their social workers and finally they wanted to be talked to, listened to and importantly consulted on matters that affect their lives. Similarly, Thomas and Beckford (2001) in their study *Adopted Children Speaking*, found that the adopted children valued adults who:

- expressed themselves simply and clearly;
- used concepts that were familiar to children;
- were aware of the impact of emotional distress on children's understandings;
- who were able to elicit a child's fears; and
- offer them reassurance.

Similar to the findings of these aforementioned studies, children in the present study wanted first and foremost to be listened to. Echoing the findings of Cashmore's (2002) study, children in the present study wanted more involvement in decisions than they had previously experienced. In saying this, they also demonstrated remarkable insight and understanding that there will always be decisions where regardless of their input, there will be little or no choice (e.g. move to a particular foster home because it is the only one available). Regardless, they wanted to, at least be consulted and at best understand why some things could not happen and why some things did happen (e.g. if they can't stay in a particular foster home they wanted to understand why that was). This broadly corresponds with what Thomas & O'Kane (2000) found where the looked after children in their study did not necessarily 'want their own way', but they 'did want a say'.



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Thomas and Beckford's (2001) study considered how children were prepared for adoption - from the perspectives of adopted children. It found that adopted children wanted information about their birth family and their past. Equally they wanted information about their adoptive family and why they wanted to adopt. These findings, although specific to adoption, echo some of what children in the present study wanted in relation to their permanency plans. The theme, which ties these two studies together, is 'information'. Looked after and adopted children clearly want and deserve an understanding of why certain things have happened, alongside their family histories and life stories.

When exploring the extent of children's involvement in the present study (from the children's perspectives) a complex issue for practitioners emerged. On the one hand, children wanted to be involved and given information about their life stories and families, but on the other they did not want to hear distressing and/or painful things about their birth families. Reugger (2001) emphasised how children regardless of most circumstances maintain strong emotional connections and loyalties to their birth parents and families. Whatever harm or abuse a looked after child may have endured, they nevertheless most often express a desire to return home to birth parents, siblings, and pets and to that, which was most familiar.

Drawing on findings reported above, two significant tensions emerge. First, how adults often struggle with sharing difficult and sensitive information with children and secondly, how 'adult' and 'professional' assessments are shared with children - particularly where children may have very different views and memories of their birth families. If social workers felt more



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confident and able to share greater details from their assessments with children; would this help children come to better terms with why they are not living with their birth families? Conversely, would this cause unnecessary distress to a child who remains loyal to their family, irrespective of any professional assessment? It would be unethical to empirically test issues such as these; however, it does bring into question what principles and philosophies underpin practice. Freeman (1998) argues that where children's rights are predominantly reflected in rights to protection and services; children's participation rights are almost irrelevant. It would appear that social workers in the present study attach greater significance to 'protecting' children from information versus 'facilitating' their access to it.

In reviewing the children's files during phase two of this present study, it was evident that most children (who participated in this present study) have expressed a desire to return to their birth families. As noted earlier, one of the significant challenges faced by those working with looked after children is that most remain fiercely loyal to their birth families regardless of the past (Steinhauer 1991; and Fahlberg 1991). Equally, Schofield (1998) found that a child's capacity to make sense of alternative living options to their birth family is strongly influenced by their past experiences.

Betrayal of trust and hurt within the family will severely prejudice a child's capacity to make sense of his experiences. It is essential to bear in mind that it is not only the child's emotional state but also the capacity to make sense of experiences, a cognitive capacity, which is damaged and this will affect the child's capacity to make sense of available options. (Schofield [1998] in Ruegger 2001 p. 45)

Given this inherent tension, social workers are faced with the challenge of helping children to understand and make sense of difficult and sensitive

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information – information that is crucial to facilitating effective participation. Marshall (1997) considered what should be done to help children in situations of divorce and separation, where there was a sense that the details of the relationship breakdown could be damaging to a child,

In separation and divorce, it is important that the child has some information but it should be sifted from adults rather than given direct. It may be appropriate to withhold some information on, for example, the reasons for the separation – if the father has a string of affairs and gone off to live with a woman down the road. What information is given and the way it is provided should be governed by the age of the child. The question is not just what to tell them, but how to tell them.

(Marshall 1997 p. 77)

For reasons discussed in Chapter Three (Methodology) one of the children interviewed in the present study was aged sixteen years. His permanency plan was decided when he was aged twelve. He was asked to reflect back on what the experience has been like for him. He was positive about the extent to which he had been involved, but admitted seeing a report recently which revealed many painful details about his birth family that had been kept from him at the time. Despite this, he felt he would not have been able to handle that depth of information when he was younger. He identified three things, which in his view should influence what information is given to a child and they are:

- the child's age;
- the context and extent of the information; and
- the timing of when the information is given to the child.

He called for a balanced and considered approach from social workers level of information they share with children. This further supports what Thomas

and Beckford (1999) found in their study. They reported that practice should always be sensitive to children's needs, but that looked after children should be involved and kept informed in a manner consistent with their age and understanding taking account of their sense of time.

### Conclusion

The areas highlighted in this chapter appear to interact in ways that limit the capacity of adults to facilitate the genuine participation of looked after children in permanency planning. Social workers described frustrations with processes that they are not clear about, lack of time to spend with children and with the lack of choice in long-term resources for children and importantly their reluctance to engage children in this 'uncertain' process. At the same time, the children described being frustrated with being told about decisions after they had been made, how they wanted to be part of how they were made, but how they struggled with formal meetings and having to hear negative things about their families. These all raise significant questions, not only about procedure but how social workers balance involving children in ways that are not overly upsetting, but are meaningful. The answers to issues such like this are complex, but overwhelmingly the present study found that looked after children wanted some understanding of why certain things happen to them, wanted more certainty and wanted to be at least 'asked what they thought', not just told about key decisions in their lives.

Permanency planning processes were described by both the professionals and the looked after children in the present study as drawn out and

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confusing. Some social workers described feeling unconfident in what steps to take in achieving permanency for children, and most described how they struggled with how they can and should involve looked after children in complex and uncertain processes. Furthermore, both adoption panel members and social workers expressed serious doubts about the role of the Children's Hearing System in permanency planning, despite its significant role in progressing cases towards permanency. Adoption panel members spoke of relying on both the written and verbal reports of the social workers in their consideration of children's views and wishes, yet admittedly most were dubious of the authenticity of the material they received. Moreover, social workers themselves described feeling constrained in their abilities to accurately reflect the views and wishes of children, where they were not present. Equally, social workers felt unable to properly prepare children for occasions when they would be present because of other 'prioritised' demands on their time (e.g. not having time to properly prepare a child for a children's hearing – in the case described above the social worker prepared the child outwith his regular working day because there had been 'no time' to do it during office hours). The professionals struggled with exposing children to situations that could be harmful (e.g. emotional meetings or distressing information) and described extreme caution in how they might engage children in uncertain processes – where even they are not confident of the outcome (e.g. what foster home they would be moving to). As this chapter has demonstrated, it was not one factor that has resulted in children's participation being limited, rather it is a number of different ones.

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Inviting children to participate is not about asking them to make decisions, nor is it about expecting them to be fully accountable for the consequences of any such decision; but as Alderson (2004) questions whether they can, should or want to, is separate. In considering the 'should' and 'can' and 'want to', the present study found that although professionals believe looked after children 'should' participate, and looked after children 'want to' participate, yet looked after children remain limited in their capacity to do so.

## Conclusion

The growth of interest in and emphasis upon children's rights in the United Kingdom has resulted in significant and much welcomed changes for children and young people. For example, all four United Kingdom countries now have a children's commissioner. In 2004, Scotland appointed its first Commissioner for Children and Young People (Professor Kathleen Marshall). This independent office is responsible for ensuring that the United Nations Convention on the Rights of the Child is promoted and implemented into law, policy and practice affecting all children in Scotland. However, despite measurable advancements such as this, it would appear that for some children, the impact of children's participation rights is yet to be fully realised.

The present study has explored how looked after children (aged 8-12 years) are involved in permanency decision-making processes in one Scottish local authority and in particular, it focused on the experiences of a group of children, for whom the legal route to permanency was a Parental Responsibilities Order (hereafter a PRO). Overall, it found that despite the intentions of legislation and policy, alongside the genuine commitment of professionals to involve children in permanency planning, in practice participation remains limited.

The present study demonstrated how children's participation in major decisions about their lives is a central principle, featuring in both international and national law. It is clearly laid out in the United Nations Convention on the Rights of the Child (hereafter the UN Convention) and the



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Children (Scotland) Act 1995 (hereafter the 1995 Act). Moreover, the participation rights of children defined by international and national law feature in the adoption and permanency policy governing permanency planning processes in the local authority, which participated in the present study. Professionals in the present study voiced genuine support for children's participation in permanency planning processes and Looked after children themselves, expressed a desire to take part in it. Yet, when looked after children's participation in permanency planning was explored in detail, significant limitations emerged about its reality in practice.

The complexity involved in securing an alternative (to a child's birth family) long-term plan for a looked after child cannot be underestimated. Despite child care literature, law and policy that promote the need for early, decisive and secure outcomes for looked after children, the present study has shown how tensions and challenges interfere with the very processes which are intended to secure permanency for looked after children. Moreover, the present study demonstrates how these tensions interact in ways that create barriers to children's participation in permanency planning processes. In summary, these tensions and challenges included: legal delays; lack of resources (both staff time and shortage of long term foster carers); the role of the children's hearing system; the priority given to child protection over permanency planning work; what looked after children do and do not want; lack of confidence and skill sets amongst social workers; and lack of clear permanency policies and processes.

The present study set out to capture the experiences of looked after children in permanency planning, not only according to legislation, policy and adults

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– but crucially from children themselves. To achieve this, it was underpinned by James and Prout's (1990) well established model of childhood, which describes children as 'active observers' of their worlds; not just as passive recipients of an adult influence. Overwhelmingly, the children in the present study described being on the 'outside' of decision making processes rather than being part of them. Notably, much of what was said by the children was also affirmed by the professionals. For example, one of the key themes identified by the children was their frustration with being told of decisions after they had been made; rather than being part of the actual decision making process (e.g. not returning to the care of their parents and/or pending foster home moves). At the same time, adults described how they often do not involve children in decisions until they are sure of the outcome, for fear of raising a child's expectation of something which may or may not happen. The children described feeling frustrated with just being told what was going to happen to them; rather than being asked what they thought. All of the children described how they wanted to understand why certain things happened in their lives, even if it meant these could not change (particularly why they were not living with their birth families). Yet, at the same time, most children described how they did not want to hear painful and difficult things about their families. Thus the task of involving these children in decision-making is made much more challenging for adults.

All of the children identified their social workers as being significant figures in their lives and as the one responsible for the decision that they would not be returning to the care of their birth families. However, at the same time

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many of the children described how they did not see their social worker as often as they would like. Whilst others described being angry with their social workers and in some cases, not believing the reasons given to them for certain decisions (particularly why they were not living with birth family). Most of the children wanted to attend meetings where their lives were being discussed and particularly when decisions were being made. Yet, most felt intimidated by groups of strangers; irritated with always being asked the same questions over and over again and frustrated with having to miss school in order to attend meetings (if they were even asked to attend).

The professionals who took part in the present study reinforced the key messages from the children described above. Despite a belief that looked after children should participate in permanency planning, these professionals clearly struggled with making it a reality in practice. Professionals described how they found it difficult to involve vulnerable children in processes which were plagued by uncertain outcomes (e.g. which long-term foster carers will the child grow up with, and/or decisions outwith their control – i.e. court orders, and/or decisions of a children's panel) and impacted by significant and sometimes unavoidable delays. Moreover, many described feeling unsure and uncertain about what steps and procedures they should be taking when pursuing a permanency plan for children, irrespective of how they would explain this to a child. Additionally, most described feeling frustrated with not having enough time to spend with looked after children to support and facilitate their participation in permanency planning, because of competing priorities on their caseloads.

## Conclusion

Findings of the present study should be treated with some caution, as they represent the views and experiences of a small sample of looked after children and professionals from one local authority in Scotland. However, many of the themes emerging from the present study echo findings of other notable research as discussed previously. It is suggested then that the findings of this study have implications for social work policies and practices. These are as follows:

- The resources needed to support permanency planning (specifically for children not moving towards adoption or a return to their birth families) should be reviewed and steps should be taken to ensure that professional staff feel supported in this sometimes neglected, but crucial area of practice. This includes staff time dedicated to permanency planning, time spent with looked after children and the availability of long-term foster carers (this could include a review of how long-term foster carers are recruited and supported).
- Training offered to professional staff involved in permanency planning (including theory, assessment and procedures) may benefit from a review and development. Alongside this, training and ongoing support to social workers with responsibility for speaking to children about difficult and complex areas should be enhanced.
- The role of the children's hearing system in permanency planning should be reviewed and made clearer to panel members, social workers, other professionals and looked after children. If the children's hearing system continues to play a key role in

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permanency planning, then training for panel members on permanency should be enhanced.

- Consideration should be given to how key meetings (including looked after children reviews, adoption panels, and children's panels) are structured. This review should question if these meetings are conducted in ways that either invite or inhibit children's meaningful participation. In the case of adoption panels, any review should consider if it is right that children do not attend and question if there were ways of improving the children's contribution to process, where they are not present. The mechanisms for including the views of children from outside meetings should form part of this review. Looked after children themselves should be involved in any such review of meetings.
- Current permanency planning policies and procedures may benefit from a review. For example, some participants in the present study described feeling unsure of what steps to take when moving a case towards permanency. Moreover, there was considerable disagreement over the use of timescales for permanency – some felt they would be helpful whilst others felt they would not allow for flexibility. The participation of children in permanency planning should form part of any review.
- Although the present study involved several different phases of data collection capturing many perspectives, it was missing one key voice in permanency planning for looked after children – that of long-term



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foster carers. This was neither deliberate nor an oversight, rather as a result of the methodology chosen, the children were asked to identify who was responsible for their permanency plans (for interview) and none named their foster carers. Had any foster carer been named by the children, they would have been asked to participate. However, it remains a missing dimension in the present study and would benefit from further inquiry.

The principal conclusion of this thesis was that the participation of looked after children in permanency planning is limited. Despite progressive changes to child care legislation, national and local policies reflecting the participation rights of children, there continue to be tensions in how this specific right is effectively translated into practice. Various reasons for this observation are suggested, ranging from resource issues to lack of clarity over procedures and policies, to how priorities in work loads and assumptions of what children do and do not want. Alongside the implications for policy and practice listed above, the present study points to many unanswered theoretical questions that would benefit from further exploration.

The present study was concerned with the experiences of looked after children going through decision making processes, leading to permanent plans. Both in the majority of cases and in the words of most professionals, these children were unable to achieve the levels of participation intended by the current discourses of children's participation rights. Rather, both the policies and professionals demonstrated struggles between balancing the responsibility to protect children (from both potentially harmful information



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and processes) with a desire to respect their rights to participate in key decisions about their lives. Equally significant, the children voiced how they struggle with wanting to know more about why they are not living with their families; how they would like to participate more often in decisions about their care at the same time as not wanting to hear painful things about their birth families.

Contrary to the tensions emerging from the present study, some have argued protection and participation rights can and do co-exist for children. Yet, on the whole, findings here suggest that the child care legislation, policy and practices (relating specifically to permanency planning) continue to be underpinned by paternalistic models of childhood, despite progresses achieved by the children's rights movement. Important theoretical questions are therefore raised; these, include:

- To what extent is practice explicitly or implicitly informed by how childhood as a social construct is conceived by legislators, policy makers and practitioners?
- Can children's participation rights ever be fully realised within the present child welfare and protection regimes?
- Is aspiring to the full application of children's participation rights frustrated by the protective frameworks which appear to drive policy and surround practice?

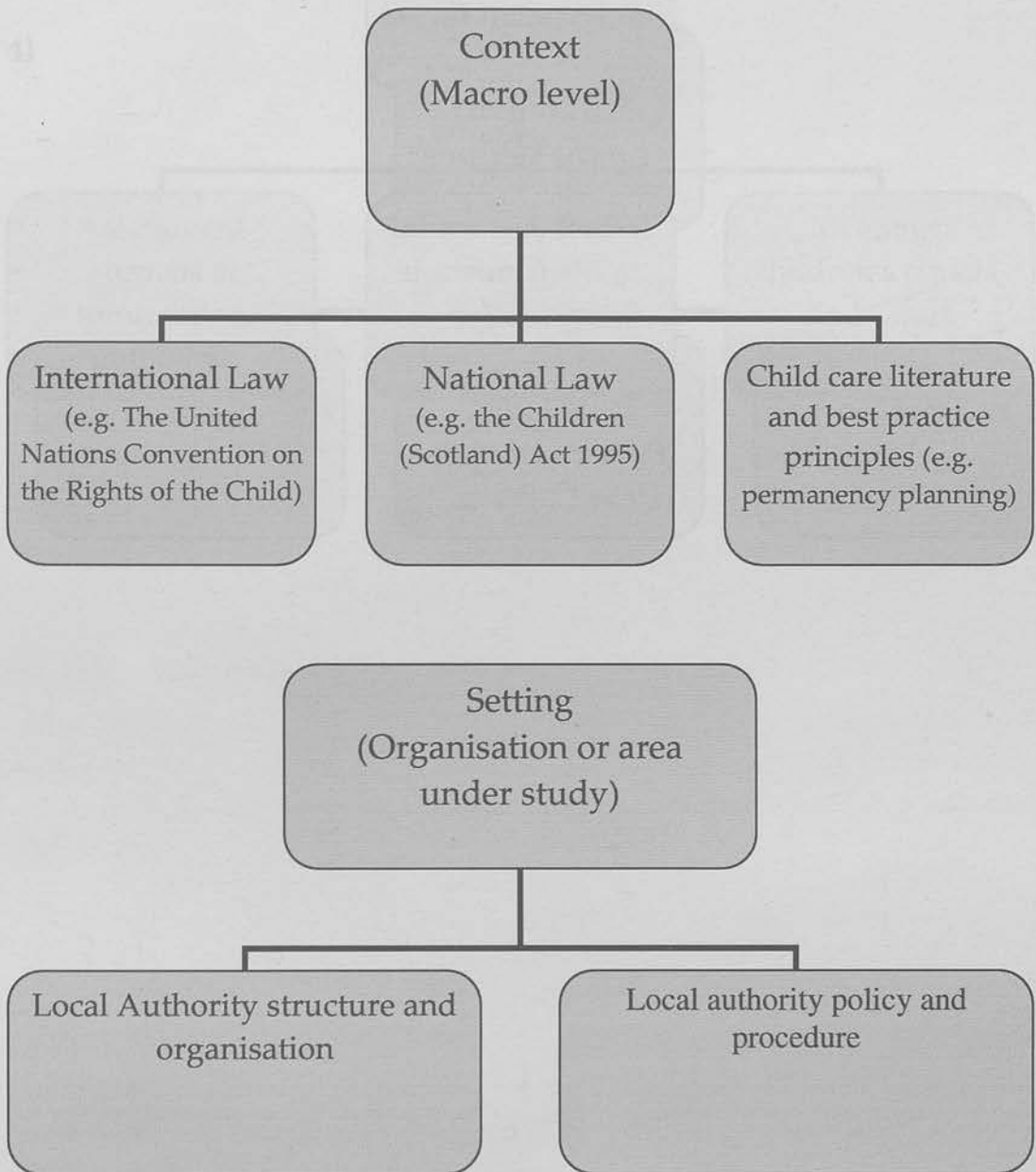
### Conclusion

- Are these questions of greater significance for looked after children versus peers who are not involved in a formal child 'protection' system and do these children genuinely require 'more' protection'?
- Do social workers and other professionals underestimate the importance of a looked after child's loyalty towards his or her birth family when attempting to achieve permanency for a child outside his or her birth family and the impact this has on that child's ability to effectively participate in the decision making processes?

Parents and guardians are responsible for protecting children, whilst gradually guiding them in ways that strengthen and enhance their independence and development into adulthood. For some children, social workers and other professionals are charged with this fundamental task. Looked after children have explicit rights to be both protected and have their views and wishes taken into account when key decisions are being made about their lives. Nowhere is this balance more complicated to achieve when the matter in question involves a decision for a child to grow up outside his or her birth family in either foster or residential care. This balance and these complications need to be engaged with constantly if we are to do justice to the enormity of both having to separate a child from his or her family of origin and help him or her build a life in another.

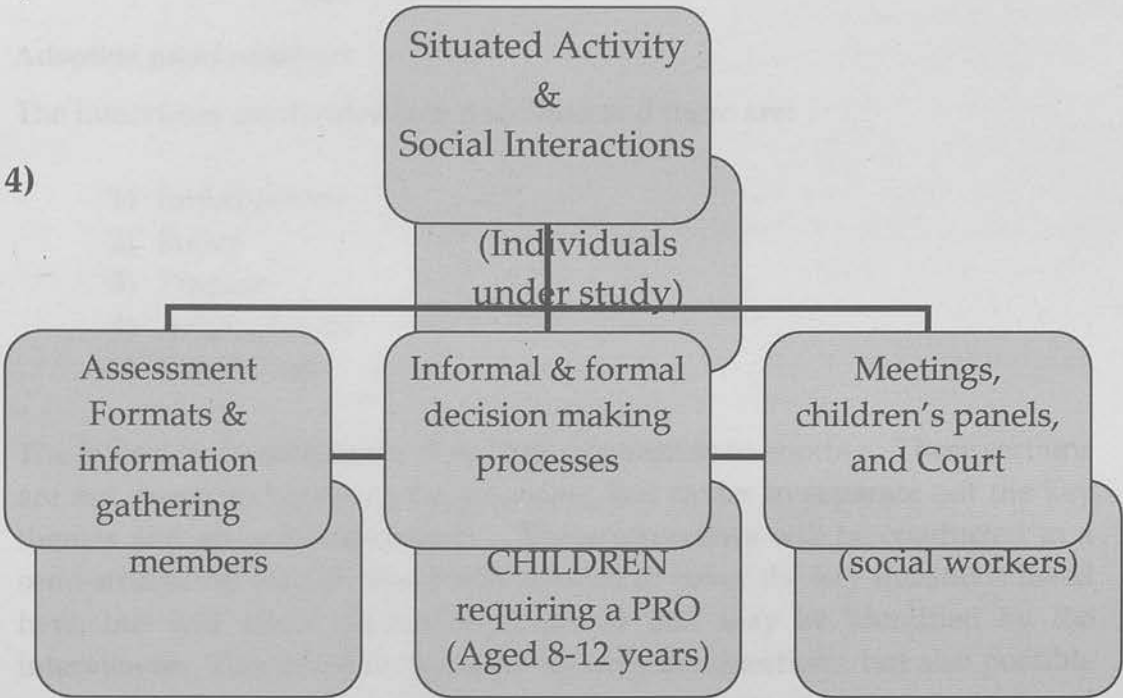
## Appendix A – Layder’s Model

### Resource Map



3)

4)



## Appendix B – Interview schedule

### Adoption panel members

The interviews are divided into 5 sections and these are:

- 1) Introductions
- 2) Policy
- 3) Practice
- 4) Arising issues
- 5) Conclusion.

The interview is intended to flow from one section to another. These sections are not meant to break up the interview, but rather to separate out the key themes and areas for discussion. These interviews will be conducted in a semi-structured way; in that I will attempt to cover the key questions listed here, but will allow discussion of points that may be identified by the interviewee. This schedule contains not only the questions, but also possible prompts and probes that could be used to generate further comment and insight from the interviewee.

### *Section One: Introductions*

(The following represents the spirit of what will be said to introduce each other and to engage the interviewee in the interview process. I will not be reading this from a script, although the content of what I will say is reflected below.)

Good morning/afternoon and thank you for taking this time to meet with me. My name is Jennifer Turpie and I am a PhD student at Edinburgh University. My interest in speaking to you today is based on your experience and involvement as a member of the adoption panel here at \*\*\*\*\*.

I will ensure that they have signed a consent form for their participation and that there are no issues with that. I will review with them that I want to tape record our interview and confirm this with them and start the tape at this time.

*Have you had the opportunity to read through my summary of research?* If they say no, I will give them a brief overview of the aims of this research and the various stages of data collection that I will be moving through, for example, I



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might say... *"My research is exploring how long-term permanent decisions are made for children and how they themselves experience their involvement in this decision making process. This exploration is set in the context of current legislation and 'good practice principles'. To assist me with this, I have asked to speak with yourself about the procedures and role of the Adoption Panel and your professional experience in this area. As well, I will then be speaking to children who have been through the experience to learn about it through their eyes".* In either case, I will ask them if they have any questions that they wish to clarify before we get started on the actual interview.

To assist me in understanding what particular experience and professional training you bring to our discussion, I have a few brief questions about yourself.

1. What area is your professional training and qualification in?
2. How many years have you been working in this capacity?
3. When you serve on an A&PC panel, what is your role?
4. How many years experience do you have as an A&PC panel member?

### **Section II - Policy**

The next set of questions are designed to get a sense of the interviewee's definition of the adoption panel, their awareness of existing policy or policies (regarding Adoption and Permanent Care) at this social work department and how any named policy or policies have been influenced by the key principles in the UN Convention and the Children (Scotland) Act 1995.

1. What would you identify as being the key functions of the A&PC panel?
2. What do you think is the key policy or policies that influence the functioning of the A&CP? *(If the interviewee does not identify any policies, I will refer them to policy that I reviewed in preparation for this interview – Adoption and Permanent Care document 12 – Areas of Responsibility. I will bring a copy of this to the interview to show the interviewee should this be necessary to stimulate discussion)*
3. What would you identify as being the key principles in the policy or policies?
4. What would you identify as being the key influences to these principles (both internal and external) in the policy or policies?

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5. (If they have not made direct reference to the UN CRC, I will ask this question, if they have and I want to explore it further with them...I might re-word it to say...you mentioned the UN CRC, could you elaborate further and describe for me in what specific ways you see it has having influenced the policy or policies. If they did not mention it, I will ask: Do you believe the United Nations Convention on the Rights of the Child has had an impact the policy or policies that you have mentioned? *If they simply respond, "yes", with little explanation.... I will say...can you explain to me further how you think this is the case? Can you give me any specific illustrations of where you feel the UNCRC had influenced the policy? If they say "no", and they have not explained this response, I will ask them for the reasons why they have this opinion.*

**PROMPTS:** *if the interviewee has not made reference to the principles of Articles 3 and 12, I will ask them directly about this to inquire about their views on these key areas for my research. For example, I might say...Article 3 of the UN Convention, states that in "all actions concerning children...the best interest of the child shall be a primary consideration", how is this reflected in the policy directives that you have mentioned for the A&PC panel? And, Article 12, which states that, shall "assure to the child who is capable of forming her or her own views the right to express those views freely in all matters affecting the child; do you feel this is reflected in the policies?"*

### Section III – Practice

This section is intended to explore particular issues related to practice. My questions will firstly focus on what particular principles from the identified policies are those, which are particularly influential on the practice of the panel; this will include some discussion on how a case comes before a panel in the first place. From here, I will move to specific questions about practice, which hope to generate discussion and examples from the interviewee. My questions will place particular emphasis on the key principles that I am exploring in my research.

6. What is the role of the Looking After Children Care reviews in relation to the planning of this committee?
7. At what stage in life of a case does it move to this panel?

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8. What key factors influence the progression of a case? (prompts here might include: are there formal and/or informal timelines that are followed)
9. Are there particular principles, which guide your practice on the A & PC panel? If so, can you describe for me what these are and give examples as you see fit?
10. What would you identify as the key decisions, which the A & PC panel are faced with making? (They may have already identified this through other questions and if so I will open up the next question by asking, "*you said earlier that one of the key functions of the panel is to discuss the most suitable long-term plan for the child*"...and will I move directly into the next question.
11. What key principles would you identify as influencing your decision to support either adoption or long-term foster care for a particular child?
12. Do you think that children should participate in this decision making process? Can you explain to me why you think this and perhaps give some examples from your experience?
13. In what ways do the children themselves contribute to this process? (Probes here might include: do they attend meetings, if not...how do you see them contributing to the process, what type of information are children given about the process and the particulars of their case?)
14. Are there factors that do and/or should influence a child's degree of involvement in this process? What are these factors and can you give some examples of what you mean? (Prompts here might include: age, maturity, development, family background, consequences of long-term vs. short-term decisions)
15. Are there circumstances when you think the child should not be present at the meetings? What are these and can you give me some examples? If they are not present, are their views considered as part of the process and how is this achieved?
16. (Assuming they have identified some 'good practice' principles...I will refer back to these for this question) Are there any barriers that you see getting in the way of good practice and could you describe for me what these are? (If they have not identified 'good practice'), I will ask them "*What is getting in the way of good practice in this area?*"

**Section IV – Arising Issues**

I will advise the interviewee that we have come to the end of my prepared questions and I will thank them for time and answers. At this time, they will be given an opportunity to raise any issues or questions that were not identified during the interview.

**Section V – Conclusion**

I will again thank the interviewee for their valuable time and will remind them that this is the first stage of my research and from here I will be speaking to children and others involved in their lives. From there, I will be analysing my data and writing up the PhD. I will advise them that I will be providing the Local Authority with a summary of my research findings and I will ask if they are interested in receiving a personal copy. If so, I will take their mailing details. I will also leave them with the means to get in touch with me, should they have any follow up issues.

[Copy of original]

Appendix C (i)

Invitation Pack

To: \_\_\_\_\_[child's name]\_\_\_\_\_

Hi, my name is Jennifer Turpie. I am a student at Edinburgh University and I am hoping to meet with you and talk about some important things that I want to learn more about. It has to do with children like you, so if you are interested please read on for more information. In this pack you will find a letter from me explaining what I want to do, a sheet of questions that I thought you might have and form telling me whether or not you then want to talk to me.

If you decide that you would like to meet me after you have had chance to look through this, just let your foster carer or social worker know and I will then get in touch with you.

Thank-you for your time.



[Copy of original]

## Appendix C (ii)

Hello [child's name],

Before I came to Scotland, I worked with children and young people in Canada. The children that I worked with were living with foster parents, just like you are.

I am writing you now, because I would like learn more about how important decisions are made for children and young people living in care. I want to learn about this from your point of view.

I want to understand how it was decided that you would live with foster carers and not your parents and what role you and other important people in your life have had in making this important decision.

It is your choice whether or not you meet me and talk to me. If we do meet, I will have a set of questions that we will work through together. The information that you give me will be used to help paint a picture of what it is like for children like yourself, when big decisions that affect your lives are being made. I won't use your names or any other personal details, so people reading it won't know who it was that gave me the information.

Have a think about whether or not you would like to meet me, learn more about my project and perhaps take part. There is some more information about it this with this letter.

If you decide that you would like to take part, there is a form at the end of this package and you can circle or put a check beside the one that says you want to be part of my project. It is up to you if you want to take part, you do not have to.

If you want to meet me, could you let your foster parent or social worker know and they will how to get in touch with me to set up a time to meet each other.



[Copy of original]

## Appendix C (iii)

### Any Questions?

**Are you going to tell anyone what I say?**

No, the things that you tell me will be used in my project but not with your name beside it, so people reading it will not know who said it.

If you tell me something that makes me think that you are going to be hurt or someone around you is going to be hurt, I will pass this on to someone who can help you and others to make sure that everyone is safe. But, I won't do this without telling you first.

**Do I have to answer all of your questions?**

No, if there are questions that you don't want to answer you don't have to. You can tell me this by holding up a red card, or by just telling me that you don't want to answer that one.

**How long will this take and how many times will I meet you and what will happen from here?**

I am hoping to meet once for about an hour. I have some prepared questions to ask you. When I am all finished, I hope to produce a report based on what I have learned from you and other people. This will be given to the local authority and you will also get a copy of a summary.

**If there are other questions you want to ask me before you decide whether or not you want to take part, you can ask me when we first meet.**

**THANK-YOU**

## Appendix D - Interview Schedule

### Children

---

Prior to the interview, I will request the following biographical information about the children from their social worker:

- Age
  - Gender
  - Ethnicity
  - Status in care (e.g. PRO or registered for permanence)
  - Type of current placement (foster care [long or short term] or residential care)
  - Siblings in same placement or other residence (home, foster care, residential care)
  - Ongoing contact with biological mother, father, siblings
  - Any special needs specific to the child/most appropriate ways of communicating with this child
- 

The interview will be divided into six sections. These sections are based around the key themes which will be explored with the children. They are:

1. Introductions
2. Getting to know you
3. Specific decisions
4. Your permanent decision
5. Arising issues
6. Conclusion

#### Section One: Introductions

(The following represents the spirit of what will be said, however it will be adjusted to suit the moment and the age of the particular child)

Hi there, my name is Jennifer. I am a student at Edinburgh University. It is nice to meet you. Do you remember this 'invitation pack' which was given to you (I will have a copy of the pack with me and will point to it at this

## Appendices

time)? Did you have a chance to look through it? What did you think? If the child is particularly quiet here, I will open the pack and will ask them specific questions about it. I will ask the child to explain to me how they understood the reason for me wanting to talk to them today? If the child is unclear, I will go over it at this time.... For example, I might say...I want to understand what it is like for children during times when important things are being decided about their lives? To do this, it is very important to hear the story from someone like you, who will know best what this, is like. I will show them the pack of things that I have brought to the interview and will explain to them that we are going to work these questions together. I will tell the child that there is no right answer, that I want to hear what they think and how they, themselves experienced that areas that I am going ask about. I will remind them that as I said in the invitation pack, if there are questions that they do not want to answer they can tell me that or hold up a red card and we will move on. There is no obligation to answer any of the questions.

I will explain to them that I would like to tape record our conversation, so that I will be able to remember it better when I get home. I will show them the equipment (small tape recorder and tape) and ask if they have ever used anything like this before? Do they know how to use it? Would they like to press the button to get it-started etc. I will ask them if we can test it out to make sure we can hear our voices on the tape and will proceed with a 'testing' if the child is okay with this. I will explain to them that I will be the only one hearing this tape and that I am going to type it up, but I will not be using their real names or any details that could allow for others to know who I am talking about.

I will go over confidentiality and explain to the child that I will not be sharing what they tell me with anyone. Things that they tell me will help to answer my questions, but their names, names of their families, and addresses will not be in the final report. I remind them of what I said in the information pack; that if they say something that leaves me concerned about their safety or those around them, that I will pass this on to someone who can help but that this will not be done without them knowing about it.

I will ask them if they have any questions before we get started.

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I will confirm with the child that they want to continue and start answering my questions. If they are okay to move forward, I will start the tape recorder (or the child will), and the interview will start.

### Section Two: Getting to know each other

This section has two goals:

- 1) Continue to break the ice with the child and give them more opportunity to become comfortable with the interview and myself.
- 2) Provide the grounding to the discussion on 'decisions', and to establish how the child understands how decisions have been made in their lives, who made them? How they were made? Where they happy with them? Did they have their say?

In a minute, I am going to ask you to tell me three things about yourself...but before I do that...are there any questions that you want to ask about me?

Okay, now I want to learn a few things about you...I know that your name is \_\_\_\_\_, but what else can you tell me about yourself?

Can you tell me three things about you?

Let's write them down on these cards that I have, so that we can remember them. Do you want to write or would you like me to? (I will have plastic cards that can be written on with markers and then wiped off and reused for this exercise)

For each thing that the children have told me about themselves, I will ask the following set of questions. I will place the card with the 'fact' in front of us, so that we both can see it. If the child has told me things that are not really decisions.... I will have a prepared set of cards saying things like: what clothes I wear; what music I listen to, and what TV programs I watch and will use these instead.

1. *Who decided that? (I will offer an example here based on information about me, 'Well, the first thing I told you about me was that my family moved to Canada. I was just a baby at the time and my parents decided that we would go there').*
2. *Was that what you wanted?*

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3. *What did you think of that decision, did you think it was good or bad, did you think it was fair? (if it was something that the child decided on their own as identified through question 1 – I will ask them to tell me how they came to that decision) – trying to get at their views on it -*
4. *(If the child did not make the decision themselves) Did anyone ask you wanted? What can you tell about that...how did they ask you? What happened after you told them what you wanted?*

### Section Three: Specific decisions

Goal: To gradually move the child into specific and more sensitive areas of their lives and the decision making around them as a precursor to the next section dealing with their permanent plan.

If the child identified any one of the following key areas, then in this section I will refer them back to the areas of their life that they identified – if they did not.... I will then introduce this next section by saying *"okay...those are really great things that you have told me about yourself so far, now I am going to ask you about two specific areas of your life"*.

I will have these two 'specific areas' written on cards and they will be school and contact with family. As well, I will have cards with pictures of these items for any children in the sample who are not able to read. The pictures will as neutral as possible, i.e. the symbol used for a school on a map and for family I will use stick figures of no particular race or gender, but there will be ones to represent 'adults' and other to represent 'siblings or other younger relatives'.

#### School

*Where do go to school?*

*Are there things that you like/dislike about school – what are they?*



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*Can you remember how it was decided that you would go to \_\_\_\_\_?*

*Do you know who was part of deciding that you would go to \_\_\_\_\_?*

*What did you think of that decision?*

### Family

*Do you have family or special friends who you don't live with, but that you have contact (or visit) [use the language most familiar to the child] with?*

*Can you tell me who they are?*

*Where do they live?*

*How often do you see them?*

*What kind of contact do you have with them? (I.e. letter, face to face?)*

*Who decides how often you see your family/special friends?*

*Do you know how does that get decided?*

*What can you tell me about that?*

*Are you part of making that decision?*

*Does the plan ever change or does it stay the same?*

*What do you think of that plan? Is it good, fair or not a good plan?*

I have asked you particular decisions and your role how they were made...are there any other areas that you think are important and that you have not had a chance to talk about or are there any questions that I did not ask that you think are important?

**Section Four: Your Permanent Plan**

Goal: To encourage the child to recall how their permanent decision was made from their perspective and to establish what role they saw themselves and others having in the process. This section will be sub-divided into the basic areas of when, who, and how and what about you?

At some point in your life, a big decision was made about you. That you were going to grow up in foster care/residential care and that you not going to be returning to live with your mum and/or dad – name others as appropriate to that particular child (grannies, aunts etc.).

What I want to do now is understand how you understood how that big decision was made and who was part of making that decision.

*When*

Can you remember when that decision was made? How long ago was it? Can you remember how old you were at the time? Can you remember where you were living at the time? Where was that?

*Who*

Can you remember who part of making that decision was?

Let's write these people down on cards, so that I don't forget. As well, we are going to use them in the next section.

*How*

I will place the cards in front of us and explain to the child, that I want to now understand what role each of these people had in how the decision was made.

To help with this, I am going to ask a few questions about each person.

The child will be given the choice of order through which we move through the identified people. The following questions will be asked of each one:

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(Where I know the details about the child i.e. names, locations etc... I will use specifics rather than just referring to the 'decision' for example)

How do you think \_\_\_\_\_ was involved in deciding where you would live?

How much say do you think they had making that decision?

Is there anything else you want to tell me about that person?

What about you? (If they did not mention themselves ask directly)

Did any one of these people that you have just told me about talk to you about the decision that you would not be returning to live with your mum and/or dad (others as appropriate)?

(Ask the child to pick the card with this person's name on it and put them to one side)

Was there anyone else who spoke to you about this decision? Who were they?

(Write these peoples names on cards as well)

Can you remember what they said to you?

What did \_\_\_\_\_ tell you about what was happening and how things were going to happen etc.? (Go through each one the child identifies)

Did \_\_\_\_\_ ask you about what you thought (for you view your thoughts etc.) Before the decision was made, during the time that the decision was being made, after the decision was made?

Where did \_\_\_\_\_ speak to you?

Did you go to any meetings were they talked about the decision that you would not be returning to live with your mum and/or dad was discussed?

What were these like for you? Did you speak at meetings? If you did not, can you help me understand why that is?

If the child has not attended meetings.... Can you tell me if there was a reason why you did not attend meetings? Where you told about what happened at these meetings? Who told you and when did they tell you? What was this like for you?

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Do you think it was a fair decision that was made? Why yes and/or why no?

Is there anything else that you want to tell me about how you experienced this decision?

Is there anything that you would keep the same or change for other children who are living in foster care and not with their mum's and dad's?

### **Section Five: Arising issues**

I will advise the child that I am finished asking all the questions that I wanted to ask and will check with them if there is anything that they want to ask and know.

### **Section Six: Conclusion**

I will go over what happens now in terms of my study and will tell them that I will send them a summary at the end.

Prior to leaving the interview, I will check with child to make sure they are okay and ask them if there is someone they can talk to if want to talk about some of things raised in this interview. I will thank them for sharing very personal details about their life.

## Appendix E - Schedule – Children’s files

File Number: \_\_\_\_\_

(\*This is a number that will be assigned for the research, it will not be the official file number)

**Date information gathered:** \_\_\_\_\_

(Section numbers here reflect the sections in the BAAF Form E)

Age at first placement	
Reason for first placement	
Number of placements	
Number of placements	
Type of placement	
Age at first placement	
Age at first placement	
Current placement	
Legal status	
Original placement	
Current placement	
Residence	



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### Part One: General Information

<b>Age</b>	
<b>Gender</b>	
<b>Ethnicity</b>	
<b>Age at time when first looked after</b>	
<b>Reason for being looked after</b>	
<b>Number of time being looked after</b>	
<b>Number of placements</b>	
<b>Type of current placement</b>	
<b>Age at time of first APCP</b>	
<b>Age at time of registration for permanence</b>	
<b>Current legal status</b>	
<b>Legal status plan</b>	PRO –fostering      Adoption
<b>Ongoing contact with family</b>	Mother: Yes / No    Father: Yes/ No Siblings: Yes/ No Extended Family: Yes / No
<b>Disabilities</b>	

## Part Two: Child's Profile

### Section 8: Profile of the Child and his/her needs

(In this section the SW is asked to provide a description of the child and to include the child's wishes and feeling in respect of what type of family will best meet his or her needs)

1. Reference made to child's wishes and feeling: Yes \_\_\_\_\_ No \_\_\_\_\_

Comments: \_\_\_\_\_

### Section 10: The Child

Child's wishes and feelings about the placement plan in light of her/his understanding

## Part Three: Plan for the Child

### Section 11: Placement Plan

Does child received written information about the plan

Has the child been counselled regarding her/his future

Yes  
No

Any views (the child's) about her/his religion or cultural upbringing

Specific questions for adoption placements

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<i>Plan for the Child</i>	
<i>Date plan agreed to</i>	
<i>Where the plan was agreed to</i>	<i>Review meeting</i>  <i>Fostering panel</i> <i>Adoption/permanence panel</i>
<i>Did this include the key person caring for the child</i>	<i>Yes</i>  <i>No</i>

### *Section 11: The Child*

Child's wishes and feelings about the placement plan in light of her/his understanding	
Date child received written information about the plan	
Has the child been counselled regarding her/his future	<b>Yes</b> <b>No</b>
Any views (the child's) about their religious or cultural upbringing	
Specific questions for adoption placements:	

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<ol style="list-style-type: none"> <li>1. Does the child understand adoption/freeing or other plan will mean for him/her?</li> <li>2. Does the child understand the legal implications of adoption/freeing?</li> </ol>	
Has legal advice been sought on the plan for the child? Anything in this in respect of the child's wishes and feelings?	<b>Yes:</b> _____ <b>No:</b> _____ <b>Comments:</b>         

### Part Four: Additional Information

#### Section 12: Checklist of additional material

This can include (#9) the child's written statement or verbal submission on his/her views about the proposed placement/adoption.

Written Submission: Yes: \_\_\_\_\_ No: \_\_\_\_\_

Summary of Key points:

**Part Five: Signatures**

**Section 13: Signatures**

<b>Child</b>	Yes: _____ No: _____
<b>Birth Parents</b>	Yes: _____ No: _____ (mother) Yes: _____ No: _____ (father)

**Part Six: Adoption and Permanent Care Meeting Minutes**

**Date of the last meeting held:** \_\_\_\_\_

**Reference to the child's views:** yes \_\_\_\_\_ no \_\_\_\_\_

Comments:

**Decision of the Panel:**

- Freeing Application to be lodged
- Application for Parental Responsibilities Order
- Matching approved

**Reference to child's views on the decision of the panel:** yes \_\_\_\_\_ no \_\_\_\_\_

Comments:

## Appendix F - 'Decision maker' interview schedule

### General Information

- What area is your professional training in?
- What is your current post?
- How long have you worked in this current post?
- What is your role in the ESW
- How many years professional experience do you have?

### Policy

1. What would you identify as being the key external policies and/or legislation that guide practice in the area of making long-term decisions for children in care?
2. What would you identify as the key principles in these policies and/or pieces of legislation that you have identified?
3. What do you think has influences these principles? (i.e. research, UNCRC)
4. What would you identify as the key local authority policies?
5. What are the key principles that guide and influence these policies?

### Practice

1. What would you identify as the key structures in practice where long-term decisions are taken for looked after children?
2. What criteria and/or principles influence your case management to move in the direction of permanency for a looked after child?
3. Clearly one of the main principles is the children's wishes and feelings should be considered when decisions are being taken about their lives. I am interested in getting your views and experiences on this in the context of your practice and the structures within which you work: I have broken it down based on the areas that the children identified to me in my interviews with them (information and meetings)
4. Firstly though – clearly children are different and from your perspective/experience are there any hard fast rules/principles that you apply when considering how to involve children in complex decisions?

### Information

1. What information do you think children should have about how and when decisions are taken in the SWD (e.g. the meetings and forums in which these decisions are taken etc)?
2. Do you think the kind of decision being taken should influence whether or not they told about it (e.g. being moved from one foster home to another)?



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3. What do you feel should be the timing of giving children information and what do you think should be criteria for what information you give children?
4. Who should give the children this information and who most often does?
5. How should they get this information?
6. What are the barriers, as you see it to giving children information - both practical and structural?
7. What would help you in achieving best practice with looked after children when you are engaged in permanency planning?

### Meetings

1. Key meetings forums: What would you identify? Children mostly mentioned the children's panels/LAC – not one mentioned the APCP – do they know about this? If not, do you think that is right? What are your views on children's attendance at meetings? Under what circumstances should they attend/not attend?
2. As children are not present at some meetings – how are their views heard and brought to the discussion – and do you think that is adequate?
3. Are there factors that you think should influence the degree of a child's involvement in this process of permanency planning (either directly or indirectly)
4. Do you think looked after children should participate in permanency planning?
5. In your opinion, what degree of consideration is actually given to children's views during the permanency process and how influential do you think their views and wishes are in the outcome?

### Any other comments or questions?

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